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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---|---|
| Proceeding | 92062974 |
| Party | Plaintiff<br>Aerospace Communications Holdings Co., Ltd. |
| Correspondence Address | LIONEL LAVENUE<br>FINNEGAN HENDERSON FARABOW GARRETT & DUNNER LLP<br>901 NEW YORK AVENUE NW<br>WASHINGTON, DC 20001<br>UNITED STATES<br>docketing@finnegan.com, lionel.lavenue@finnegan.com, brian.westley@finnegan.com, TTAB-Legal-Assistants@finnegan.com |
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| Signature | /Lionel Lavenue/ |
| Date | 03/10/2016 |
| Attachments | 3-10-16 Petitioner Opposition to Registrant's Motion to Suspend and Motion for EOT.pdf(490096 bytes )<br>3-10-16 Exhibit A - Motion to Stay.pdf(112807 bytes )<br>3-10-16 Exhibit B - Motion to Quash Service.pdf(3866304 bytes )<br>3-10-16 Exhibit C - Extension of Time.pdf(69816 bytes )<br>3-10-16 Exhibit D - Motion to Dismiss.pdf(1068990 bytes ) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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| AEROSPACE COMMUNICATIONS HOLDINGS CO. LTD.,<br><br>Petitioner,<br><br>v.<br><br>THE ARMOR ALL/STP PRODUCTS COMPANY,<br><br>Registrant. | Cancellation No.: 92062974<br><br>Mark: ASK THE PRO<br>Reg. No.: 4244354<br>Reg. Date: November 20, 2012 |

**PETITIONER AEROSPACE COMMUNICATIONS HOLDINGS CO. LTD.'S OPPOSITION TO REGISTRANT'S MOTION TO SUSPEND AND MOTION FOR EXTENSION OF TIME**

Petitioner Aerospace Communications Holdings Co., Inc. ("ACH") hereby opposes Registrant's motion to suspend the petition to cancel pending the final determination of a civil action in the U.S. District Court for the Eastern District of Texas, *IDQ Operating, Inc. v. Aerospace Commc'ns Holdings Co., Ltd.*, Civ. No. 15-CV-781 (the "Civil Action"), as well as Registrant's motion for an extension of time to answer or otherwise respond to the petition.

## I. THE BOARD IS NOT OBLIGATED TO SUSPEND THE PETITION TO CANCEL; INDEED, UNDER *B & B HARDWARE*, THE BOARD'S DECISION SHOULD HAVE PRECLUSIVE EFFECT

A suspension request is not granted as a matter of right. Rather, the Trademark Trial and Appeal Board (the "Board") has discretion to suspend a cancellation proceeding when civil litigation is pending between the parties. TBMP § 510.02(a) ("Suspension of a Board proceeding pending the final determination of another proceeding is solely within the discretion of the Board"); *see also Martin Beverage Co., Inc. v. Colita Beverage Corp.*, 169 USPQ 568, 570 (TTAB 1971) (rejecting the argument that the Board automatically suspends proceedings

when civil litigation is pending between the parties as "manifestly incorrect."). Suspension is granted "only after both parties have been heard on the question and the Board has carefully reviewed the pleadings in the civil suit to determine if the outcome thereof will have a bearing on the question of the rights of the parties in the Patent Office proceeding." *Martin Beverage*, 169 USPQ at 570. *See also New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011) (Board will scrutinize pleadings in civil action to determine if the issues before the court may have a bearing on the Board's decision).

Although the Board has historically granted suspension requests pending the outcome of federal court litigation, the Board has done so because district courts were not bound by Board holdings. *Id.* The Supreme Court recently ruled, however, that Board decisions in opposition or cancellation proceedings should have preclusive effect on the district court if the usual rules of issue preclusion are met. *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293, 1310 (2015). In light of the Court's ruling, and because the Board is well-positioned to efficiently decide ACH's petition to cancel, the Board should deny Registrant's suspension request. Proceeding with the petition to cancel will promote the efficient resolution of this dispute by preventing the parties and the district court from unnecessarily litigating claims that the Board can efficiently resolve.

## II. GRANTING MOTION TO SUSPEND WOULD NOT PROMOTE JUDICIAL ECONOMY; RATHER, IT WOULD ENCOURAGE NEEDLESS LITIGATION

Registrant urges the Board to suspend this proceeding on the basis that the Board should allow the Civil Action to take precedence. Registrant's motion, however, does not fully disclose the status of the Civil Action, which is pertinent to the Board's decision. Specifically, Registrant has yet to serve ACH in the Civil Action. Moreover, the district court is currently considering ACH's motion to stay the Civil Action pending the outcome of two petitions for *inter partes*

review of the asserted patent in that case, as well as ACH's petition to cancel Registrant's asserted trademark, ASK THE PRO. Additionally, there are three pending motions before the district court, which could lead to the suspension and/or dismissal of the case. As there is no active substantive litigation on the merits of Registrant's claims in the Civil Action, the Board should deny Registrant's motion to suspend these proceedings. In addition, Registrant's motion should be denied because the Board is best positioned to decide the issue of registrability due to its unique expertise, and the Board's decision in this proceeding will be entitled to preclusive effect in the Civil Action.

**A. The Civil Action Has Not Been Served and the District Court May Never Reach the Substantive Issues**

Registrant's suspension request should be denied because the Civil Action in the Eastern District of Texas has not yet reached a substantive stage and it is unclear if it will move forward at all. First, ACH has not yet been served with the complaint, which was filed more than six months ago. Second, ACH has moved to stay the Civil Action due to two petitions for *inter partes* review of the asserted patent, which are pending before the Patent Office Trial and Appeal Board, as well as the petition to cancel Registration No. 4244354 for the ASK THE PRO mark, currently pending before the Board. (A copy of that motion is attached as Exhibit A.) In its motion to stay, ACH shows that the district court should grant the stay because, among other reasons, it will simplify the issues before the court if the other proceedings move forward first. Finally, there are three other pending motions before the court, which may result in suspension and/or dismissal of the Civil Action—*i.e.*, ACH's motion to quash service of the complaint; Registrant's motion for an extension of time to serve the complaint; and ACH's motion to dismiss due to improper service, lack of personal jurisdiction, and incorrect venue, or in the alternative, to transfer the case to another district. (Copies of those motions are attached as

Exhibits B-D.) For these reasons, ACH respectfully submits that the district court is likely to grant the stay. As such, Registrant's assertion that suspending this cancellation petition will promote judicial economy and preserve the parties' resources is, at best, misleading, and probably false.

**B. The Board's Decision Is Entitled to Preclusive Effect**

The Supreme Court's recent decision in *B & B Hardware, Inc. v. Hargis Industries, Inc.* eliminates Registrant's main argument for why this cancellation proceeding should be suspended: that the Board's decision will not be binding on the district court. Rather, *B & B Hardware* established the following rule: "So long as the other ordinary elements of issue preclusion are met, when the usages adjudicated by the TTAB are materially the same as those before the district court, issue preclusion should apply." 135 S. Ct. 1293, 1310 (2015). Although *B & B Hardware* focused on the issue of likelihood of confusion, the rule established by the Court was not limited to this topic. Indeed, "the opinion is broadly worded with no indication that it would not apply as well to issues of validity of marks decided by the Trademark Board," including for example a finding "that a designation is a generic name not eligible for trademark protection" and "that a non-inherently distinctive designation either has or does not have a secondary meaning, elevating it to protectable status as a mark"—the very issues before the Board in ACH's petition to cancel. 6 McCarthy on Trademarks and Unfair Competition § 32:99 (4th ed. 2016).

The Supreme Court explained in *B & B Hardware* that the "ordinary elements" of issue preclusion are that "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is

conclusive in a subsequent action between the parties, whether on the same or a different claim." 135 S. Ct. 1293, 1303, citing Restatement (Second) of Judgments § 27, p. 250 (1980).

Here, each of these elements is met:

- First, the registrability of the ASK THE PRO mark will be litigated to a valid and final judgment. As the Court explained in *B & B Hardware*, the procedures used by the Board as an administrative tribunal are not so significantly different from those in federal courts as to undermine their validity and prevent preclusion at the district court level. 135 S Ct. 1293, 1300, 1304.[1]
- Second, the registrability issue is essential to the judgment. Because the sole purpose of Petitioner's petition for cancellation is that the ASK THE PRO mark is not valid, there is no question that the registrability of the mark will be "essential" to the Board's judgment.
- Third, the Board's determination will be conclusive in the subsequent action. The same registration at issue in the cancellation petition is also at issue in the Civil Action, as Registrant has based its trademark infringement claim *solely* on its federal registration for the ASK THE PRO mark, *not* its common law rights in the mark. Consequently, there is no difference in the format of the mark, and no difference in the services allegedly covered by the mark.
- Finally, the same parties are involved in both actions. Although Armor All has obtained all rights to the ASK THE PRO mark, and the civil action lists IDQ as the plaintiff, the merger agreement IDQ filed with the Patent and Trademark Office makes it clear that IDQ was merged into Armor All.

[1] The Supreme Court has also explained that "'[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.'" *University of Tenn. v. Elliott,* 478 U.S. 788, 797–798, 106 S.Ct. 3220, 92 L.Ed.2d 635 (1986) (quoting *United States v. Utah Constr. & Mining Co.,* 384 U.S. 394, 422, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966)).

For these reasons, the Board's ruling on the validity of Registrant's ASK THE PRO registration should have a preclusive effect if and when the district court considers this issue, which is at the heart of Registrant's complaint (see Section II.C below). The Board should therefore proceed with deciding ACH's petition to cancel the ASK THE PRO mark, as the Board will almost certainly come to a decision well before the district court, which may never reach the issue. And the Board is best-positioned to decide the registrability of the ASK THE PRO mark because it of its unique expertise in this area. *See Tompkins Seals, Inc. v. W. Co.*, Civ. No. 85-CV-4929, 1985 WL 4952 (E.D. Pa. 1985) (noting the "special competence" of the Trademark Trial and Appeal Board in deciding the registrability of a trademark).

**C. The Board's Decision on Registrability Will Promote Judicial Economy**

This petition to cancel should also move forward because deciding the registrability question will simplify the Civil Action, thereby leading to greater efficiency and judicial economy. In Count II of the complaint, Registrant asserted trademark infringement under 15 U.S.C. § 1114(1) based on its federal registration of the ASK THE PRO mark. (Compl. ¶¶ 42, 48, "Defendant's unauthorized use of the ASK THE PRO® mark constitutes trademark infringement under 15 U.S.C. § 1114(1)".) Section 1114(1) provides that an infringer of a federally registered mark "shall be liable in a civil action by the *registrant*." Absent that federal registration, Registrant lacks standing to sue for infringement of a federally registered mark. *Ass'n of Co-op. Members, Inc. v. Farmland Indus., Inc.*, 684 F.2d 1134, 1138 n.4 (5th Cir. 1982) ("Although federal law does recognize a cause of action for trademark infringement, 15 U.S.C.A. § 1114(1), relief is available only to owners of federally registered trademarks ...."). As such, by determining whether this registration should have issued, the Board is well-positioned to narrow the proceedings in the Civil Action and alleviate the need for litigation of this issue.

The Board is also primed to efficiently decide the registrability question. As ACH's cancellation petition makes clear, the issue before the Board is straightforward: whether the term "ask the pro" is generic or merely descriptive and thus incapable of functioning as a trademark.[2] Indeed, ACH's petition lists numerous examples where "ask the pro" is generic or merely descriptive when used in connection with asking or submitting questions to pros or professionals in a given field, including those services covered by or relating to Registrant's registration.[3] Given the straightforward issues involving the generic or descriptive nature of the ASK THE PRO mark, the parties should not be forced to litigate this issue before the district court when it can be efficiently resolved by the Board.

## III. REGISTRANT HAS PROVIDED NO REASON FOR ITS INABILITY TO TIMELY RESPOND TO PETITION

Finally, in addition to rejecting Registrant's motion to suspend the petition to cancel, ACH respectfully requests that the Board deny Registrant's motion to extend the time to answer or otherwise respond to the petition. Registrant did not even attempt to meet and confer with ACH regarding this motion, and Registrant has provided the court with *no* reason why it could not timely answer the petition. "A party must not assume that its motion to extend . . . made without the consent of the adverse party will always be granted as a matter of course." TBMP §

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[2] ACH has also asserted a fraud claim based on its assertion that Registrant knew or acted in reckless disregard for the truth that other organizations were using "ask the pro" in connection with describing services in which professionals offer expert advice and knew or acted in reckless disregard for the truth that those organizations had a right to use "ask the pro" in commerce. Although the district court can also decide issues of fraud on the PTO, ACH respectfully submits that the Board is in the best position to decide this issue.

[3] Registration No. 4244354 for ASK THE PRO covers the following services in Class 37: "Vehicle air conditioning technological consultation services in connection with the maintenance of vehicle air conditioners; vehicle air conditioning technological consultation services in connection with the repair of vehicle air conditioners; vehicle air conditioning web site consultation in connection with the maintenance of vehicle air conditioners; vehicle air conditioning web site consultation in connection with the repair of vehicle air conditioners."

509.02. ACH believes Registrant's request is therefore inappropriate and that Registrant should be ordered to promptly answer or otherwise respond.

**Conclusion**

There is no reason for the Board to suspend this cancellation proceeding. Registrant's request to suspend this proceeding is at odds with the status of the Civil Litigation. Moreover, the Supreme Court's decision in *B&B Hardware* eliminates the need for the Board to defer to the district court. Instead, the Board's expertise makes it well-suited to decide the registrability of the ASK THE PRO mark, thereby narrowing the issues for the civil action and promoting judicial economy. There is also no reason for the Board to grant Registrant's motion for an extension of time to answer or otherwise respond to the petition, as Registrant has provided no basis for its inability to timely respond. In light of the foregoing, Petitioner respectfully requests the Board to Deny Registrant's motions.

Respectfully submitted,

Dated: March 10, 2016

By: /Lionel Lavenue /

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**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing PETITIONER AEROSPACE COMMUNICATIONS HOLDINGS CO. LTD.'S OPPOSITION TO REGISTRANT'S MOTION TO SUSPEND AND MOTION FOR EXTENSION OF TIME was served by prepaid First Class Mail on March 10, 2016, upon Registrant at the following address of record:

IDQ Operating Inc.
2901 West Kingsley Road
Garland, TX 75041

With a courtesy service copy to:

Michael A. Grow
ARENT FOX LLP
1717 K Street, N.W.
Washington, DC 20006

Michael.Grow@arentfox.com
Eileen.Henry@arentfox.com
tmdocket@arentfox.com

# Exhibit A

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

| | |
|---|---|
| IDQ OPERATING, INC.,<br><br>Plaintiff,<br><br>vs.<br><br>AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.,<br><br>Defendant. | Case No. 6:15-cv-00781-JRG-KNM<br><br>**JURY TRIAL DEMANDED** |

**DEFENDANT AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.'S AMENDED MOTION TO STAY PENDING THE *INTER PARTES* REVIEW PROCEEDINGS AND PENDING TRADEMARK CANCELLATION PROCEEDINGS**

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## I. INTRODUCTION - A STAY IS UNIQUELY APPROPRIATE IN THIS CASE

ACH has filed two petitions for *inter partes* review ("IPR") before the Patent Office Trials and Appeals Board ("PTAB")—covering not only the single claim asserted by IDQ but all 38 claims in the patent. Each petition cites multiple prior art references and demonstrates the multiple grounds and combinations of prior art that render the asserted claims invalid under both 35 U.S.C. §§ 102 (anticipation) and 103 (obviousness). Additionally, ACH has filed a petition for cancellation of IDQ's asserted trademark with the Trademark Trials and Appeals Board ("TTAB"). Among the four considerations for a stay, a stay is proper because (1) it will not unduly prejudice IDQ, (2) it will simplify the issues for trial, (3) the case is in its early stages, and (4) it will reduce the burden on the parties and Court.

IDQ opposes the stay, but IDQ cannot point to any reason against a stay, pending the outcome of the IPR proceedings regarding the patent dispute and the TTAB proceedings regarding the trademark dispute. IDQ cannot fairly claim prejudice, as IDQ did not seek a preliminary injunction—thus, IDQ can be adequately compensated with money damages. IDQ also cannot dispute that a stay will simply issues for trial, as IDQ's primary arguments in the case are currently before the PTAB and TTAB. Also, there are three pending motions before the Court, which may result in suspension and/or dismissal of the case. IDQ further cannot dispute that discovery is still in its early stages and that no depositions have been taken; indeed, claim construction has not yet begun. Finally, IDQ cannot dispute that a stay will reduce the burden on the parties and the Court, as the PTAB and TTAB proceedings will affect the case.

ACH has filed challenges against the asserted patent and asserted trademark as early in the case as possible, within 5 months of filing the case, and well within the one-year statutory bar. Further, ACH has timely filed this motion for a stay of this case expeditiously.

## II. FACTUAL BACKGROUND: THE CASE IS IN THE VERY EARLY STAGES

### A. ACH IS YET TO BE SERVED; MULTIPLE MOTIONS TO QUASH/DISMISS/TRANSFER PENDING; CASE IS IN EARLY STAGES

The case is premature and not ready to proceed. As outlined in ACH's pending Motion to Quash Service of the Complaint (dkt. 13), ACH has not been served. Indeed, in recognizing this failure of service, IDQ has moved for an extension of time to serve the Complaint (dkt. 32), a motion that is also pending. Further, ACH also has moved to dismiss this case under Rule 12 on three different grounds: (1) improper service, (2) lack of personal jurisdiction, and (3) misvenue, and alternatively, ACH has also moved to transfer the case to the Northern District of Alabama, the only district where ACH has contacts and may be subject to personal jurisdiction (dkt. 29), another motion that is also pending Thus, there are no fewer than three pending motions before this Court that, if resolved for Defendant ACH, render this case as entirely premature.

### B. MOTION TO DISMISS PENDING, BASED IN PART ON FACT THAT PLAINTIFF AND DEFENDANT HAVE NO CONNECTION TO VENUE

As outlined in ACH's pending Motion to Dismiss and/or Transfer (dkt. 29), Plaintiff IDQ filed this action in the Eastern District of Texas, although neither IDQ nor ACH are located in the District. Although IDQ and ACH are competitors, IDQ did not seek a preliminary injunction, and therefore, IDQ does not have a reasonable basis to assert prejudice in this case.

### C. IPR PROCEEDINGS ON THE PATENT AND/OR THE TTAB PROCEEDINGS ON THE TRADEMARK ARE IN PROGRESS

On January 15, 2016, ACH filed two petitions for IPR with the PTAB, each challenging all of the claims in the sole asserted patent.[1] The IPRs include multiple challenges for each claim of the asserted patent under 35 U.S.C. §§ 102 and 103. The Patent Owner's preliminary responses are due on April 21, 2016, and institution decisions are expected by July 21, 2016.

[1] IPR2016-00441 and IPR2016-00442 challenge all claims of the patent at issue in this case.

Accordingly, should the IPRs be instituted, final written decisions will be issued by the PTAB by July 21, 2017. Once instituted, there can be no dispute that issues regarding claim construction and validity will be addressed, which will simplify disputed issues in the case.

On January 15, 2016, ACH also filed a petition for cancellation of IDQ's ASK THE PRO mark[2] with the Trademark Trial and Appeal Board ("TTAB"). In its Petition, ACH asserted that the phrase "ask the pro" is generic and incapable of functioning as a trademark. Alternatively, ACH asserted that even if the phrase "ask the pro" is not generic and could be considered descriptive in some contexts, it cannot function as a trademark for the services identified in IDQ's federal trademark registration because there is no showing of secondary meaning. Finally, ACH asserted that, at the time IDQ filed the ASK THE PRO application, IDQ committed fraud on the PTO because IDQ knew or acted in reckless disregard for the truth that its claim that "no other person, firm, corporation, or association has the right to use the mark in commerce" was false and misleading. The entire procedure will conlcude by April 2017. Like the IPRs, issues of trademark validity will be addressed, which will simplify the case.

### D. ONLY INITIAL DISCOVERY (NO DEPOSITIONS) HAS OCCURRED

IDQ filed suit against ACH on August 17, 2015, then IDQ claimed (erroneously) that service occurred on November 3, 2015 at the AAPEX trade show, but ACH disputed service with a Motion to Quash on November 19, 2015. ACH also filed a motion to expedite briefing for the motion to quash on November 19, which was granted. The Court held a scheduling conference on December 8, 2015, and, at the hearing, counsel for ACH advised counsel for IDQ that ACH planned to file IPR petitions and seek a stay. Lavenue Decl., ¶¶ 2-3. As for discovery, according to the case schedule, infringement contentions were served by IDQ on November 25,

[2] Trademark Board Cancellation No. 92062974 challenges the trademark asserted in this case.

2015 and invalidity contentions were served by ACH on January 19, 2016. No depositions have yet occurred, and discovery is in the earliest of stages. ACH responded to IDQ's First Set of Interrogatories on February 10, 2016. On February 3, 2016, ACH notified the Court that a motion to stay would be filed based on the IPRs, and now, ACH has filed this Motion to Stay. Thus, this Motion has been expeditiously prepared and filed, while the case is in an early stage.

### E. EIGHT COUNTS IN COMPLAINT RELATE TO ISSUES FOR STAY

On August 17, 2015, IDQ filed suit against ACH alleging, among other things, patent infringement of the '943 patent. IDQ's infringement allegations stem from the ACH's sale of automotive coolant canisters with recharging hose by Walmart. In the Complaint, IDQ brings eight total claims against ACH, all revolving around alleged patent, trademark, and copyright infringement: (1) patent infringement, (2) trademark infringement, (3) copyright infringement, (4) unfair competition under the Lanham Act, (5) unfair competition under Texas law, (6) unjust enrichment under Texas law, (7) tortious interference with prospective business relations, and (8) false marking. *See* dkt. 1. The PTAB proceedings and/or the TTAB proceedings will likely reduce the burden on the parties and Court, because the PTAB will address the patent issues and the TTAB will address the trademarks issues, thus reducing the burden on the parties and Court.

## III. LEGAL STANDARD – THIS DISTRICT HAS HELD THAT A STAY IS APPROPRIATE WHEN IT WILL NOT PREJUDICE THE PLAINTIFF, WILL SIMPLIFY CASE, AND WHEN DISCOVERY IS NOT YET COMPLETE

A district court has the inherent power to control its docket, including the power to stay proceedings. *NFC Tech. LLC v. HTC America, Inc.*, No. 2:13-CV-1058, 2015 WL 1069111, at *1 (E.D. Tex. Mar. 11, 2015); *Clinton v. Jones*, 520 U.S. 681, 706 (1997). Management of a court's docket "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). The party

seeking the stay bears the burden of showing that the stay is appropriate. *Id.* at 255. A stay is not automatic, but rather it is based on the circumstances of the individual case. *See, e.g., Datatreasury Corp. v. Wells Fargo & Co.*, 490 F. Supp. 2d 749, 755 (E.D. Tex. 2006).

### A. FACTOR 1: MERE DELAY OF RECEIVING MONEY DAMAGES DOES NOT CONSTITUTE UNDUE PREJUDICE TO NONMOVING PARTY

As to whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party, the rulings in this Circuit have consistently found that "mere delay in collecting [monetary] damages does not constitute undue prejudice." *Crossroads Systems, Inc. v. Dot Hill Systems Corp.*, No. 13-CA-1025, 2015 WL 3773014, at *2 (W.D. Tex. June 16, 2015); *see also Asetek Holdings, Inc. v. Cooler Master Co.*, No. 13-CV-457, 2014 WL 1350813, at *4 (N.D. Cal. Apr. 3, 2014) ("Delay alone does not usually constitute undue prejudice, because parties having protection under the patent statutory framework may not complain of the rights afforded to others by that same statutory framework.") (internal quotations omitted).

### B. FACTOR 2: ESTOPPEL, POSSIBLE INVALIDITY OF CLAIMS, AND EXPERT OPINIONS FROM THE PTAB WILL SIMPLIFY THE CASE

As to whether a stay will simplify the issues in question and trial of the case, this Court has recognized that IPR proceedings often result in simplification of the issues for trial by mooting the infringement and invalidity issues. *See Norman IP Holdings, LLC v. TP-Link Techs.*, No. 13-cv-384, 2014 WL 5035718, at *2 (E.D. Tex. Oct. 8, 2014) (a stay "may be partially justified where the outcome of the [administrative proceeding] would be likely to assist the court in determining patent validity and, if the claims were cancelled in the [administrative proceeding], would eliminate the need to try the infringement issue.") (internal citations omitted). A stay also allows the parties and court to avoid potentially unnecessary and costly discovery. *See e-Watch, Inc. v. Lorex Canada, Inc.*, No. H-12-3314, 2013 WL 633472, at * 8

(S.D. Tex. Sept. 26, 2013) (granting stay, as the parties would otherwise be required to "pursue discovery, prepare and file claim construction statements, and participate in a claim construction hearing for patent claims that may be limited [or] changed" significantly).

### C. FACTOR 3: A STAY IS APPROPRIATE WHEN DISCOVERY IS NOT COMPLETE AND WHEN THE TRIAL DATE IS MONTHS AWAY

As to whether discovery is complete and a trial date has been set, a stay is proper where "the parties [have] not engaged in any substantive discovery" and the "*Markman* hearing [is] several months away." *Norman IP Holdings*, 2014 WL 5035718, at *3. This Court has also noted that, when discovery deadlines are months out and the trial date is set for months away, "it is likely that the majority of the expenses the parties will incur are still in the future." *Cellular Commc'ns*, No. 6:14-cv-759, Order Granting Partial Motion to Stay. So, this Court has found that a stay is appropriate where the majority of the work, and expense, in the case is yet to come.

### D. FACTOR 4: A STAY IS APPROPRIATE TO PRESERVE RESOURCES, INCLUDING BOTH PARTY RESOURCES AND JUDICIAL RESOURCES

As to whether a stay will reduce the burden of litigation on the parties and court, in granting motions to stay pending PTO review for IPR proceedings, this District and others have recognized that judicial economy and the PTO's expertise in evaluating the technical issues of patentability are important factors to be considered. As a final argument of prejudice, IDQ will also likely argue against a stay, because IDQ also brought trademark and copyright infringement claims, not just patent claims. But, the trademark claim is similarly situated with the patent claims, as ACH has also challenged the trademark claim at the TTAB. Moreover, IDQ has also not sought preliminary injunctive relief. As damages are all IDQ is entitled to for all claims, and monetary damages are sufficient to compensate IDQ for any potential delay, if anything. Thus, although IDQ will likely argue that there many counts that require adjudication and resist the

stay, a review of each of the various counts demonstrates that they do not dictate against a stay.

**a. Count I: Patent Infringement Claim Favors Stay**

IDQ asserts a single patent claim, claim number 38, against ACH. This claim, as well as all others in the asserted patent, has been challenged in the IPR petitions. Dkt. 1, ¶¶ 35-40.

**b. Count II: Trademark Infringement Claim Favors Stay**

IDQ asserts infringement of a single trademark, "Ask the Pro." *Id.* at ¶¶ 42-50. This trademark has been challenged in the recently-filed petition for cancellation at the TTAB.

**c. Count III: Copyright Claim Favors Stay or Is Neutral to Stay**

IDQ alleges that ACH has infringed IDQ's copyrighted works, including website content, website video, and printed materials. *Id.* at ¶¶ 52-56. The accused website content and the accused video have been removed, so IDQ's only claims remain money damages. Insufficient evidence exists of copying the printed materials (not to mention the merger doctrine), such that, IDQ will suffer no additional prejudice by a stay that cannot be remedies with money damages.

On the issue of substantiality similarity between the IDQ and ACH instructions, note:

| **R-134a Product** | **IDQ's Arctic Freeze (P/N AF-22)** |
|---|---|
| 1. LOCATE PORT: Locate vehicle A/C low pressure port on the larger diameter aluminum tubing, between the evaporator and compressor. Remove the protective cap. | 1. FIND PORT & REMOVE CAP: Check for and repair leaks before recharging. Locate vehicle A/C low-pressure port and remove protective cap. The low-pressure port is located on larger diameter aluminum tubing, between the evaporator and compressor. |

As shown above, the printed materials are not even close to substantially similar to infringe.

**d. Count IV: Lanham Act Claim Favors Stay**

IDQ alleges that a label on ACH's product falsely states that ACH has a mailbox in Hoover, Alabama, but ACH has produced significant evidence of such a mailbox.[3] *Id.* at ¶¶ 58-63. Indeed, ACH's mailbox (and sales consultant) in Alabama are ACH's only real contacts with

[3] If this case is not quashed or dismissed by the pending motions, ACH will provide IDQ with a reasonable chance to withdraw this baseless count, else ACH will seek appropriate remedies.

the United States. Accordingly, IDQ will suffer no additional harm from a stay as to this claim.

**e. Count V: Unfair Competition (Texas Law) Is Neutral to Stay**

IDQ's unfair competition claim under Texas state law tracks its claims under Count II and Count III of the Complaint, and the stay considerations are the same. *Id.* at ¶¶ 65-67.

**f. Count VI: Unjust Enrichment (Texas Law) Is Neutral to Stay**

IDQ's unjust enrichment claim under Texas state law also tracks its claims under Counts II and III, and the stay considerations are the same as for those counts. *Id.* at ¶¶ 69-71.

**g. Count VII: Tortious Interference (Texas Law) is Neutral to Stay**

IDQ's tortious interference claim law also tracks its very similar patent and trademark claims, and the stay considerations are the same as for that one count. *Id.* at ¶¶ 73-77.

**h. Count VIII: False Marking Claim Favors Stay**

IDQ's alleges that false marking by ACH, contending that ACH's product cans are improperly marked "PAT. NO. PENDING." *Id.* at ¶¶ 79-83. However, ACH has produced evidence that the marking on the product can is consistent with a required marking by the supplier/manufacturer of the product can for ACH, and the marking is entirely appropriate.[4] Indeed, IDQ sells cans made by the same supplier/manufacturer (located in Alabama), and those can also contain the same or similar patent marking, making IDQ's allegations dubious at best. Accordingly, like the Lanham Act claim, IDQ will suffer no harm from a stay of this claim.

## E. FACTOR TWO: THE ADMINISTRATIVE PROCEEDINGS AT THE PTAB AND TTAB WILL SIMPLIFY DISPUTED ISSUES IN THE CASE

The PTAB proceedings (IPR) and TTAB proceedings (TTAB cancellation) will undoubtedly simplify the issues in question and trial of the case. The proceedings may even

[4] If this case is not quashed or dismissed by the pending motions, ACH will provide IDQ with a reasonable chance to withdraw this baseless count, else ACH will seek all appropriate remedies.

entirely eliminate issues from the case. As such, the second factor heavily favors a stay, as a stay will simplify the numerous issues, including at least invalidity and claim construction for the patent and validity for the trademark. This Court has found that this is a particularly important factor that weights in favors of a stay. *NFC Tech.*, No. 13-cv-1058, 2015 WL 1069111, at *8.

**1. The Court Will Benefit From the PTAB Proceedings**

With regard to the IPR proceedings before the PTAB, those proceedings can simplify the proceedings before this court by considering the validity (or invalidity) of the patent asserted in this litigation, with the USPTO's full and focused consideration of the effect of the prior art on the asserted patents. *Id.* The benefits of awaiting the outcome of the IPR proceeding are similar to those of reexamination: (1) all prior art presented to the Court will have been first considered by the USPTO, with its particular expertise; (2) many discovery problems relating to prior art can be alleviated by the USPTO examination; (3) in those cases resulting in effective invalidity of the patent, the patent infringement portion of suit will likely be dismissed; (4) the outcome of the proceeding may encourage a settlement without further involvement of the court; (5) the record of the proceeding would likely be entered at trial, thereby reducing the complexity and length of the litigation; (6) issues, defenses, and evidence will be more easily limited in pre-trial conferences; and (7) the cost will likely be reduced for the parties and the Court. *Id.*; Thus, the parties and the Court will benefit from the pending IPRs in many of these same exact ways.

**2. The Court will Also Benefit from the TTAB Proceedings**

With regard to the trademark cancellation proceedings before the TTAB, ACH has also challenged IDQ's ASK THE PRO trademark, arguing that (1) the phrase "ask the pro" is generic and incapable of functioning as a trademark, (2) alternatively that it cannot function as a trademark for the services identified in IDQ's federal trademark registration without a showing of secondary meaning, and (3) that IDQ committed fraud. As each of these issues will be

addressed before the TTAB, the issues regarding the trademark will also be greatly simplified for the court proceedings. Further, as IDQ's state law claims also related to the same facts as the trademark claims (*see* dkt. 1), the issues surrounding these claims will also be simplified by the TTAB determinations. Thus, because both the IPR proceedings and the TTAB proceedings will simplify issues for the case, regardless of outcome, because the Court will benefit from the PTAB's and TTAB's expertise, and because proceeding with the litigation before resolution of these proceedings could waste significant time and resources, this also weighs in favor of a stay.

**3. After the PTAB Decision, ACH Will Be Estopped From Reasserting the Same Prior Art (With Similar Effect as to the TTAB Decision)**

Regardless of the outcome of the IPR proceedings, the issue of invalidity will be simplified because ACH will be estopped from presenting the IPR arguments again. Following a final written decision of the PTAB, an IPR petitioner may not assert "that the claim is invalid on any ground that the petitioner raised or reasonably could have raised during that inter partes review." 35 U.S.C. § 315(e)(2). So, ACH will be estopped from presenting in this case any of the same grounds of challenge that they raised or reasonably could have raised in the IPR petitions. Fewer references and fewer grounds of invalidity challenge will therefore simplify the issues to be presented to the jury. *See Gentherm Canada, Ltd. v. IGB Automotive, Ltd.*, No. 13-11536, 2015 WL 804657 (E.D. Mich. Feb. 26, 2015), No. 13-11536, 2015 WL 804657, at *3 (acknowledging "fact that much remains to be done in this case increases the Court's potential to conserve resources by waiting for PTAB to simplify the issues"). Similar benefits will result from the TTAB proceedings.

**4. If the Case is Not Stayed, There Is a Risk of Inconsistent Judgments**

Thus, for the reasons noted above, a stay will simplify the issue in the case, but additionally, note that continuing this case in parallel with the PTAB and TTAB proceedings

could have significant downsides, including a waste of judicial and party resources. For instance, the PTAB could cancel the asserted claims outright or, alternatively, only permit claims to survive in an amended form, requiring supplemental claim construction in this litigation.

This consideration is illustrated by the Federal Circuit case, *Fresenius USA, Inc. v. Baxter International Inc.*, 721 F.3d 1330 (Fed. Cir. 2013), which involved a litigation with inconsistent judgments. In the *Fresenius* litigation, the patent-in-suit had been found valid by a jury, which was affirmed by an interim decision from the Federal Circuit. *Id.* That same patent, however, was also involved in a parallel reexamination proceeding which found all asserted claims obvious . *Id.* at 1334-35. The district court had been asked to stay the case in light of the reexamination, but declined to do so. *Id.* at 1335. The Federal Circuit held that the cancellation of the claims in the reexamination precluded the patent holder's infringement judgment, reasoning that the cancellation of the asserted claims in the reexamination procedure required the district court proceedings to be vacated because "the reexamination statute restricts a patentee's ability to enforce the patent's original claims to those claims that survive reexamination in 'identical' form." *Id.* at 1339. Because a stay was not granted, almost 10 years of litigation ensued, with vast expenditures of resources by the court and costs for the parties—all for naught.

### F. FACTOR THREE: A STAY IS PROPER AS CASE IS EARLY; THE MOST COSTLY PORTIONS OF THE CASE ARE YET TO TAKE PLACE

This case is still in an early stage, and indeed, there are many pending motions yet to be decided by the Court. ACH has yet to be properly served; accordingly, ACH has filed a Motion to Quash Service of the Complaint, which is pending . Dkt. 13. Further, recognizing the service deficiencies, IDQ filed a Motion for Extension of Time to Serve the Complaint, which is also pending . Dkt. 32. Additionally, ACH filed a 12(b) motion to dismiss, arguing for dismissal of the case for lack of proper service, lack of personal jurisdiction, and misvenue (dkt. 29), and

alternatively ACH also requested transfer to the Northern District of Alabama, which is also pending. *Id.* These motions all show how early this case is, and a stay will not prevent progression of the case.[5] Indeed, claim construction has not begun, and a trial date is far away.

### G. FACTOR FOUR: A STAY PRESERVES COURT/PARTY RESOURCES

In addition to the three mandatory factors to consider for a stay, as discussed above, this District generally also considers the burden placed on the parties and the Court, a fourth consideration included in the statutory analysis for granting a stay. *NFC Tech.*, No. 13-cv-1058, 2015 WL 1069111, at *10. In *NFC*, this Court recognized that the standards for granting a stay pending IPR are very similar to those of CBM review, and that the Federal Circuit decision to grant a stay in *VirtualAgility* also applies to motions to stay pending IPR. *Id.* In *VirtualAgility*, the Federal Circuit held that a stay was justified and found that staying the case would decrease the burden on the parties and the court, when the plaintiff could be compensated through a damages remedy, the case was not far advanced, and there was no evidence of undue prejudice of a clear tactical advantage. *VirtualAgility*, 759 F.3d at 1313, 1318-20.

As in *VirtualAgility*, a stay here would benefit both parties and the Court. But, here, the benefit is not only because of the IPR proceedings before the PTAB on the patent issues but also because of the trademark cancellation proceedings before the TTAB on the trademark issues. The majority of discovery is yet to be undertaken, as minimal substantive discovery has taken place, ACH has served no discovery requests, and no depositions have taken place. Further, there would be no undue prejudice to IDQ by a 17-month stay, as IDQ did not seek a preliminary

[5] Additionally, this Court has noted that, when a determination from the PTO is not expected for many months, then this consideration also weighs in favor of a stay. *See Cellular Commc'ns Equip., LLC v. Samsung Elecs. Co., Ltd.*, No. 6:14-CV-759, Order Granting Partial Stay, at 7-8 (Mitchell, J.) (noting that, when a PTAB decision was expected in 5 weeks that "the Court acknowledges that the expenses likely to be incurred during the next five weeks are not as compelling of a reason for stay as the cases where a decision is not set to issue for months").

injunction. In fact, even IDQ will benefit from the stay by avoiding unnecessary expenses as the PTAB and TTAB address the patent and trademark issues. Finally ACH will gain no tactical advantage by a stay, as all of the advantages will benefit both parties and the Court.

## IV. STAY BEFORE INSTITUTION OF IPR PROCEEDINGS IS NOT PREMATURE

IDQ will likely argue that a stay is premature because the PTAB has not yet instituted the IPR proceedings, but the TTAB has already begun the trademark cancellation proceedings on the trademark issue in the case. For that reason alone, a stay is appropriate. As to the IPR proceedings, courts commonly stay litigation before the institution of IPRs. *See, e.g.*, *Advanced Connection Tech., Inc. v. Toshiba Am. Info. Sys., Inc.*, No. 4:12-cv-06489, 2013 WL 6335882, at *1 (N.D. Cal. Nov. 27, 2013) (citing *Fresenius* and granting motion to stay three months before deadline for decision to institute IPR). Here, although IDQ has only asserted one claim, ACH has challenged all of the claims in the assert patent, on several distinct grounds, using several art combinations for each, so it is highly likely that the Patent Office will decide not only the validity questions currently before this Court but also all of the validity questions for all of the claims in the asserted patent. This Court has noted that IPR petitions that challenge all asserted claims can "dispose of the entire litigation: the ultimate simplification of issues." *Cequent Performance Prods. Inc. v. Hopkins Mfg. Corp.*, No. 13-cv-15293, 2015 WL 1510671, at *2 (quoting *Virtual Agility*, 759 F.3d at 1314).

## V. AT LEAST A TEMPORARY STAY IS PROPER, IF FULL STAY IS NOT

As set forth in the pending Motion to Quash, IDQ initiated this case prematurely by improperly advising the Court on November 3, 2015 that service had taken place at a trade show in Las Vegas when service was entirely defective. On November 13, 2015, ACH timely filed its Motion to Quash, but the Court set a schedule based on IDQ's erroneous notice of service, and

the case progressed—indeed, it is now February 2016, and the case continues. IDQ could have (and should have) served ACH via the Hague Convention, but IDQ did not do so, and this case has been moving forward under false pretenses for months. Therefore, this consideration should also be given weight in consideration of a stay of the case. Indeed, in the Motion to Quash, ACH asked for a stay, pending resolution of the service issues.

Over the last four months, the amount of resources expended in the case has been marginal, but there are upcoming deadlines that will require significant expenditures. For example, the claim construction deadlines are quickly approaching, including the following:

- February 26, 2016 - Parties exchange proposed claim terms;
- March 18, 2016 - Parties exchange proposed constructions of claim terms;
- April 8, 2016 - Parties file joint claim construction statement;
- May 6, 2016 - Deadlines for claim construction discovery;
- May 20, 2016 - Opening claim construction brief;
- June 3, 2016 - Responsive claim construction brief;
- June 10, 2016 - Reply claim construction brief;
- June 17, 2016 - Parties file joint claim construction chart;
- July 1, 2016 - Claim Construction Hearing.

Especially in light of the IPR proceeding, which will address claim construction issues, the approval of a stay now, even if a temporary stay, is particularly appropriate and proper in this case to avoid the potentially unnecessary time and expense of the claim construction process.

Therefore, even if this Court decides to defer a ruling on a full stay until there is a final decision on institution, the Court should at least temporarily stay the case until July 21, 2016, the date by which institution decisions on the IPR petitions will be due, especially because those decisions may contain valuable information about claim construction. Otherwise, if there is no stay at all, even a temporary one, then the Court, as well as the parties, may very well waste enormous resources over the next five months of proceedings in this case, before the PTAB issues an institution decision on the IPR petitions. And, if the PTAB eventually invalidates the

asserted claim in this case, then these resources would have been needlessly expended. Thus, a stay of all pending deadlines for the next five months while the PTAB decides on institution for the IPRs will prevent any unnecessary expenditure of resources by the Court and the parties.

## VI. CONCLUSION - A STAY IS BENEFICIAL FOR ALL PARTIES INVOLVED AND WOULD PRESERVE JUDICIAL RESOURCES

ACH has not only filed two IPR petitions to cancel all of the claims in the sole asserted patent in this case, but ACH has also filed a petition for cancellation of the sole asserted trademark in this case. Also, IDQ failed to even serve ACH properly, and ACH has sought a stay of this case due to that error by IDQ since November 2015. Further, applying the four factor test for a stay, ACH satisfies all of the factors, as outlined above. Finally, ACH filed challenges against the asserted patent and asserted trademark as early in the case as possible, only weeks after the scheduling conference and within 5 months of filing the case, even without (still) effective service. Further, ACH has timely filed this motion for a stay of this case expeditiously. For all of these reasons, a stay of this case is fully appropriate, either until the resolution of the PTAB and TTAB proceedings, or at least until an institution decision on the PTAB proceedings.

Respectfully submitted,

Dated: March 7, 2016

*/s/ Lionel M. Lavenue*

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HOLDINGS CO., LTD. (for the limited[6] purposes of the Motion to Quash Service and associated papers)

[6] This is a limited appearance to file this motion to quash service only and does not allow IDQ to serve the Complaint on him as counsel for ACH, which would allow IDQ to benefit improperly from ineffective service of the Complaint and refusal to follow proper procedures and serve under the Hague Convention for service of ACH.

**CERTIFICATE OF CONFERENCE**

The Parties have complied with Local Rule CV-7(h). Counsel for both ACH and IDQ met and conferred via email on February 2, 2016 and February 4, 2016. Communications were exchanged between Lionel M. Lavenue for ACH and Janine Carlan for IDQ. Counsel for IDQ opposes the motion. On March 7, 2016, IDQ consented to the filing of this Amended Motion to Stay, although it still generally opposes the stay, in exchange for a three-day extension to respond Communications were exchanged between Lionel M. Lavenue for ACH and Taniel Anderson and Allen Gardner for IDQ.

*/s/ Lionel M. Lavenue*

Lionel M. Lavenue

**CERTIFICATE OF SERVICE**

I hereby certify that on March 7, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing ("NEF") to the following counsel of record who have appeared in this case on behalf of the identified parties:

*/s/ Lionel M. Lavenue*

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*Counsel for Defendant Aerospace Communications Holdings Co., Ltd.* (for the limited purposes of the Motion to Quash Service and associated papers)

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

| | |
|---|---|
| IDQ OPERATING, INC.,<br><br>Plaintiff,<br><br>vs.<br><br>AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.,<br><br>Defendant. | Case No. 6:15-cv-00781-JRG-KNM<br><br>**JURY TRIAL DEMANDED** |

**DECLARATION OF LIONEL LAVENUE IN SUPPORT OF AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.'S AMENDED MOTION TO STAY PENDING THE *INTER PARTES* REVIEW PROCEEDINGS AND PENDING TRADEMARK CANCELLATION PROCEEDINGS**

I, Lionel Lavenue, declare as follows:

1. I am lead counsel for Defendant Aerospace Communications Holdings Co., Ltd ("ACH"). I am knowledgeable about the facts set forth herein and make this declaration in support of Aerospace Communications Holdings Co., Ltd.'s Amended Motion to Stay Pending the *Inter Partes* Review Proceedings and Pending Trademark Cancellation Proceedings.
2. On December 8, 2016, I attended the scheduling conference before the Court, where I met in person lead counsel for IDQ, Ms. Janine Carlan.
3. At the conference on December 8, 2016, I discussed the case with counsel for IDQ (Ms. Janine Carlan), and I explained that ACH planned to seek *inter partes* review (IPR) of the asserted patent and that ACH would seek a stay of the case after filing an IPR petition.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 7, 2016

*/s/ Lionel M. Lavenue*
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ATTORNEY FOR DEFENDANT AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD. (for the limited purposes of the Motion to Quash Service as well as other necessary papers in the case[1])

[1] This is a limited appearance only, and it does not allow IDQ to serve counsel for ACH, which would allow IDQ to benefit from the ineffective attempts at service and continued refusal to follow proper procedures for proper service of a foreign company under the Hague Convention.

# Exhibit B

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

| | |
|---|---|
| IDQ OPERATING, INC.,<br><br>Plaintiff,<br><br>vs.<br><br>AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.,<br><br>Defendant. | Case No. 6:15-cv-00781-JRG-KNM<br><br>**JURY TRIAL DEMANDED**<br><br>**ORAL ARGUMENT REQUESTED** |

**DEFENDANT AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.'S**
**MOTION TO QUASH SERVICE OF THE COMPLAINT**

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## I. INTRODUCTION: DEFENDANT ACH HAS NOT BEEN SERVED

Aerospace Communications Holdings Co., Ltd. ("ACH") is a Chinese company. ACH does not have offices or a serviceable presence in the United States. Therefore, for service of process on ACH, the Hague Convention provides an avenue for service, unless there is a waiver of service. In this case, rather than seek service under the Hague Convention, Plaintiff IDQ Operating, Inc. ("IDQ") attempted to serve ACH at a trade show in Las Vegas, Nevada. But, the attempted service at the trade show was defective, as the process server never provided a copy of the materials to anyone from ACH, much less an officer of the company. Thus, because IDQ has not properly served ACH, this case has begun prematurely.

As to the attempted service at the trade show in Las Vegas, IDQ's process server simply left a packet of information with persons unaffiliated with ACH at a booth at the trade show, presumably the summons and complaint. Indeed, at the time of attempted service at the trade show, no one from ACH was present at the booth (and indeed, no one from ACH authorized to receive service was even at the trade show). In fact, no one from ACH ever received the packet of documents at all. Therefore, as it is indisputable that "service" on an individual not associated with the company in any way is *per se* improper service, service has not occurred in this case, and the improper service should be quashed.

When counsel for ACH advised counsel for IDQ that the service at the trade show was defective, IDQ then again attempted to "cure" the defective service by attempting service on counsel for ACH. However, IDQ again failed to properly serve the summons and complaint.

The law is clear that the Plaintiff has the burden of proving service. Here, because ACH has not waived service, the only proper means for service is under the Hague Convention. Because proper service has not occurred, the service should be quashed, and this case should be stayed pending resolution of the service issues, especially due to the repeated errors in service.

## II. FACTS: ACH IS A CHINESE ENTITY AND HAS NOT BEEN SERVED

### A. ATTEMPTED SERVICE AT TRADE SHOW WAS INEFFECTIVE

ACH is a state-owned Chinese company, located at No. 2 AeroCom Building, No. 138 Jiefang Road, Hangzhou, China 310009. While ACH does have 21 holdings locations around China, it has no locations in the United States. In order to avoid the expense of formally serving a foreign entity under the Hague Convention, at the outset of this case, and before the attempted service at the trade show, the parties entered into negotiations for a possible waiver of service (to avoid service under the Hague Convention) in exchange for additional time to respond to the Complaint: the Federal Rules provide 90-day for a foreign company to respond to a Complaint, and the parties were negotiating a 120-day extension. Lavenue Dec. at ¶ 2. ACH contemplated waiver of service in exchange for a further 30-day extension, and IDQ would avoid the cost of service under the Hague Convention. But, before an agreement, IDQ instead attempted service at a trade show in Las Vegas, where it must have been believed authorized persons for ACH would attend.

The AAPEX trade show took place in Las Vegas, Nevada, from November 2, 2015 through November 5, 2015: AAPEX , or the Automotive Aftermarket Products Expo, is a trade show for the auto parts industry. At the trade show, ACH had a booth, and the booth included several engineers with knowledge of car floor mats.[1] Listed as the "onsite contact" for ACH at the trade show was Jiang Qiuhua, a sales manager with experience with car floor mat products. Ex. 1 at 2. The AAPEX trade show is a private event, and no one is supposed to be admitted without proper registration and identification. Indeed, the AAPEX show guidelines prohibit anyone who is not part of the "automotive aftermarket industry" from attending. Ex. 2 at 2-3.

[1] The technology at issue in this case is refrigerants for automobiles, not automotive floor mats.

There were no managers and no employees related to the accused products in attendance on behalf of ACH. Jiang Dec. at ¶ 7. And, indeed, there were no agents or authorized representatives for ACH, who could have properly accepted service on behalf of ACH at the trade show in any event. Still, while attending the trade show, the ACH engineers for automotive floor mats shared a booth with an independent OEM company. *Id.* at ¶ 6. The OEM company employees also sat at the booth, although they were unaffiliated with the ACH team for floor mats. *Id.* at ¶ 6-8. The persons at the booth wore no badges to identify themselves by company. *Id.*

On November 3, 2015, while the ACH engineers for floor mats left the booth for a conference with a client, an employee of the OEM company remained at the booth. *Id.* at 9. Shortly after the ACH engineers left, a gentleman approached the booth and asked for if the ACH contact person, Mr. Qiuhua, was present at the booth (as noted earlier, Mr. Qiuhua was listed on the AAPEX website). *Id.* The OEM employee informed the gentleman that there was no one affiliated with ACH present at the booth at that time. *Id.* The gentleman then dropped a packet of documents on the table and left. *Id.* At no time did the gentleman identify himself as a process server or return to the booth; presumably, he was potentially not a registered attendee of the conference and was instead trespassing at a private venue. *Id.* at ¶¶ 10-11.

Once the packet of documents (in English-language) had been left with the OEM employee, the OEM employee (with limited English capability) believed the packet of document to be advertisements, which were commonly distributed at the conference, and he reportedly discarded the packet. Accordingly, no one form ACH received this alleged service. *Id.* at ¶¶ 12-13.

Following this attempted service, IDQ informed the Court that service had been "completed," and based on IDQ's representation, the Court set a response deadline. *See* dkt. 10; Lavenue Dec. at ¶ 3. To respond to the Complaint, ACH requested a 40-day extension of time, but counsel for IDQ conditioned the extension on an agreement "not to challenge service." *Id.*. at ¶¶ 4, 5. ACH refused the conditional extension (IDQ then agreed to a non-conditional extension of 14 days), and this motion resulted.

### B. ATTEMPTED SERVICE ON COUNSEL FOR ACH WAS INEFFECTIVE

As part of a meet-and-confer for this motion to quash, on November 16, 2015, counsel for ACH and counsel for IDQ held a teleconference, at which time counsel for ACH informed IDQ that ACH would seek to quash the improper service at the trade show. *Id.* at ¶ 6. Counsel for ACH explained that service at the trade show was improper and ineffective. *Id.* One day after the teleconference, on November 17, 2015, IDQ made yet another desperate and improper attempt to serve ACH, this time on counsel for ACH. *See* Ex. 3; Lavenue Dec. at ¶ 7. Counsel for ACH was not yet counsel of record, had filed no notice of appearance, and has not been authorized to accept service on behalf of ACH. Thus, counsel for ACH immediately notified IDQ that it would not accept service on behalf of ACH – and that any appearance in the case would be by special appearance. *See* Ex. 4; Lavenue Dec. at ¶ 7. Again, IDQ has refused to properly serve ACH via the Hague Convention, as required by law.

## III. LEGAL STANDARD - SERVICE, PERSONAL OR VIA THE HAGUE CONVENTION

### A. THE PLAINTIFF BEARS THE BURDEN OF SERVICE AND ALSO BEARS THE BURDEN OF ESTABLISHING VALIDITY OF SERVICE

Plaintiff bears the burden to properly serve the defendant, pursuant to the Federal Rules of Civil Procedure. Indeed, according to Rule 4, the "plaintiff is responsible for having the summons and complaint served." Further, according to the rulings on service in this District, it

is crystal clear that Rule 4(c) places the burden on the plaintiff to ensure that defendants are properly served with summons and a copy of the complaint. *Jones v. Kansas City Southern Ry. Co.*, 2010 WL 5812724, at *1 (E.D.TX, Dec. 28, 2010). Furthermore, once the validity of service has been contested, as contested here, the plaintiff bears the burden of establishing its validity. *See Carimi v. Royal Carribean Cruise Line, Inc.*, 959 F.2d 1344, 1346 (5th Cir. 1992).

**B. OPTIONS FOR SERVICE, PERSONAL OR HAGUE CONVENTION**

Federal Rules of Civil Procedure 4(h)(1) and 4(h)(2) govern service of process on foreign corporations, both within the United States and abroad. Accordingly, IDQ has the option to effectuated service on ACH pursuant to one of the two service requirements: either personal service on an authorized agent within the United States or abroad under the Hague Convention. IDQ attempted but failed personal service, and IDQ has not served under the Hague Convention.

**1. Personal Service On An Authorized Person of Company**

According to Fed. R. Civ. P. 4(h)(1), one method for serving any corporation is service on an individual "by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires . . . ." Fed. R. Civ. P. 4(h)(1)(B). Therefore, to properly serve any corporation (including a foreign corporation), a copy of the summons and complaint must be delivered to an "authorized agent."

Although ACH was unable to find if the Eastern District of Texas has addressed a similar factual case regarding service of process, the District of Nevada has concluded that a plaintiff failed to establish proper service of process, where it served an individual at a trade show and the individual was not an authorized agent of the foreign entity. *See R. Griggs Group Ltd. v. Filanto Spa*, 920 F. Supp. 1100, 1102 (D. Nev. 1996) (finding that the plaintiff made no showing that the served individual was sufficiently integrated with the organization to render service upon him

fair, reasonable and just; while the process server may have thought he was serving a legal representative of the defendant, no facts have been presented to the court to support this assumption and that assessment has no bearing on the court's determination); *see also Penn Engineering & Manufacturing Corp. v. Shanghai Jingyang Import & Export Co., Ltd.*, 2:07-cv-01505, DI# 62 at 24-25 (D. Nev. Apr. 15, 2008) ("Zhao is not an officer, managing agent, or agent appointed by law for accepting receipt of service of process for Defendant Hongyijin. Defendants' unrebutted affidavits aver Zhao was not employed by Hongyijin, and had no agency or distributorship agreement with Hongyijin. Hongyijin's authorization for Zhao to hang a banner and distribute brochures at a trade show, and to represent to persons at the trade show that he was a Hongyijin manager, do not support a finding Hongyijin authorized Zhao to receive service of process for Hongyijin . . . . Plaintiffs' process server did not attempt to verify Zhao's identity or whether he was authorized to receive service of process on Hongyijin's behalf. Under these circumstances, the Court concludes Plaintiffs have not substantially complied with Rule 4 and the Court will grant Defendants' motion to quash service."). Thus, these rulings on service at a trade show fully support ACH's position that the attempted service on ACH was ineffective.

**2. Service of Foreign Company under the Hague Convention**

Federal Rules of Civil Procedure 4(f) and 4(h) pertain specifically to service of process on foreign corporations. Rule 4(h)(2) provides that a foreign corporation served outside the United States must be served in accordance with Rule 4(f), which authorizes service on a foreign corporation "by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service of Process Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters." Fed. R. Civ. P. 4(f)(1).

"The [Hague] Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." Convention

on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters art. 1, Nov. 15, 1965, 20 U.S.T. 361 (the "Hague Convention"). "Service of process refers to a formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 700 (1988). The law of the forum state determines the "legal sufficiency of a formal delivery of documents." *Id.* "If the internal law of the forum state defines the applicable method of serving process as requiring the transmittal of documents abroad, then the Hague Service Convention applies." *Id.*

In this Circuit, service is required under the Hague Convention, if the defendant corporation is Chinese, which is a signatory country or of process to be made in accordance with the Hague Convention. *See Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634, 640 (5th Cir. 1994) ("[T]he scope of the Hague Service Convention is much broader, applying as it does to *all* service abroad upon defendants residing within signatory States [such as China].") (italics in original); *Am. River Transportation Co. v. M/V Bow Lion*, No. Civ. A. 03-1306, 2004 WL 764181, at *2 (E.D. La. Apr. 7, 2004) ("Rule 4 clearly requires that defendants located in nations bound by the Hague Convention be served pursuant to the terms of the Hague Convention. . . ."). A foreign defendant may insist on proper service under the Hague Convention. *Sheets v. Yamaha Motors Corp., U.S.A.*, 849 F.2d 179, 185 n.5 (5th Cir. 1988). Thus, ACH is within its rights to insist that service be completed under the Hague Convention.

### C. SERVICE ON COUNSEL OF RECORD DOES NOT PREEMPT THE REQUIREMENT OF SERVICE UNDER THE HAGUE CONVENTION

Because a foreign defendant is entitled to insist on proper service under the Hague Convention, it is a well-settled rule of law is that, without a formal waiver of service by the defendant, a foreign defendant is entitled to service under the Hague Convention. *Sheets*, 849 F.2d at 185 n.5. And, after extensive research, ACH can find no case where a federal court has

held that service on counsel, absent agreement or appearance, preempts the requirement of service under the Hague Convention.

Although irrelevant to this case, because counsel for ACH had not entered an unlimited appearance in this case, one state court found that, if an attorney enters an unlimited appearance in a case, that appearance may allow service on the attorney. Specifically, the Supreme Court of Massachusetts found that, when there is U.S. counsel of record, authorized to accept service on behalf of the foreign entity, service on that counsel is sufficient. *See Renaud v. Jones & Vining, Inc.*, 9 Mass.L.Rptr. 692 Mass. (S. Ct. 1999) (finding service on a German entity via the Hague Convention is unnecessary, if attorney for the foreign defendant entered unlimited a notice of appearance). But, until the date of this filing of this motion, counsel for ACH had not entered a notice of appearance in this case, and even the notice of appearance to file this was "by special appearance," only to allow the filing of this motion to quash improper service and related papers.

**D. QUASHING IMPROPER SERVICE IS AN APPROPRIATE REMEDY**

A motion to quash is the appropriate vehicle to challenge improper service, and courts have consistently quashed improper service and required proper service as an appropriate remedy. Indeed, the Fifth Circuit has long held: "The district court enjoys a broad discretion in determining whether to dismiss an action for ineffective service of process." *George v. U.S. Dept. of Labor, Occupational Safety & Health Admin.*, 788 F.2d 1115, 1116 (5th Cir. 1986); *see also Brown v. Mississippi Cooperative Extension Service*, 89 Fed. Appx. 437, 439 (5th Cir. 2004) (recognizing district court's discretion to either dismiss a case for improper service of process or quash service and then grant plaintiff time in which to properly serve defendant).

The Eastern District of Texas, likewise, often uses the remedy of "quashing" service. For example, in *Macrosolve, Inc. v. Antena Software, Inc.*, in which foreign service was not properly effectuated, plaintiff Macrosolve requested time to resolve the service deficiencies. No. 6-11-cv-

00287, Dkt. 196 at 4 (Mar. 16, 2012 E.D.TX). The Court found it an appropriate remedy to quash service but to allow time for the plaintiff to solve the deficiencies. *See* Fed. R. Civ. P. 6(b) (permitting a court to extend time "for good cause . . . on motion made after the time has expired . . . ."); *see also* 5B Charles Alan Wright et al., Federal Practice & Procedure § 1354 (3d ed. 2011) (recognizing the fact that "federal courts have broad discretion to dismiss the action or to retain the case but quash the service that has been made on the defendant.") (Emphasis added).

## IV. ACH HAS NOT BEEN SERVED IN THIS CASE, AS THE COMPLAINT WAS NEVER SERVED ON SOMEONE AUTHORIZED TO ACCEPT SERVICE

### A. IDQ'S ATTEMPTED "SERVICE" AT THE TRADE SHOW WAS INEFFECTIVE AS NOT ON AN AUTHORIZED AGENT OF ACH

According to Fed. R. Civ. P. 4, proper personal service requires "delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process . . . ." Rule 4(h)(1)(B). Thus, as a basic matter, a plaintiff is required to serve someone associated with the corporate defendant who has some authority to receive service. IDQ failed to comply with this most rudimentary requirement at the trade show, as IDQ attempted service not only on an unauthorized employee (not an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process) but also an employee unrelated to the named plaintiff, ACH.

The facts of this case somewhat parallel *R. Griggs*. *See* 920 F. Supp. 1100 (D. Nev. 1996). In *R. Griggs*, the plaintiff attempted to serve the defendant at a trade show. Although the person served in *R. Griggs* had some relation to the defendant corporation, the court found it was clear he was not an agent authorized to receive service of process, even though the person was at the trade show for the plaintiff company. *See Id.* at 1102. Accordingly, the service in *R. Griggs* was improper. *Id.* at 1103.

Similarly, in *Penn Engineering*, the plaintiff also served an individual at a trade show who was not an officer, managing agent, or agent appointed by law for accepting receipt of service of process for the defendant. 2:07-cv-01505, DI# 62 at 24-25. Rather, the defendant had merely authorized the individual to hang a banner and distribute brochures at a trade show. *Id.* at 7-8. Yet, although the person at the tradeshow was there for the defendant, the court found, however, that even the apparent authority to attend a trade show and distributing material on the defendant's behalf did not support a finding that the person was authorized to receive service of process. *Id.* Accordingly, service in *Penn Engineering*, was likewise found improper. *Id.* at 8.

The facts of the present case and service mistake are even more exaggerated that these two illustrative cases, because the person who was allegedly provided with the packet of information (presumably the summons and complaint) was not an employee of the plaintiff, ACH. Instead, under the facts, the individual whom was allegedly "served with process" had no affiliation to the defendant corporation; in fact working for another company altogether, making service entirely impossible. In fact, the deficiency of the service was quite clear – and should have been clear to the process server and to IDQ, as the person did not wear a badge identifying himself as an ACH employee, did not identify himself as an employee of ACH, in fact did not represent ACH, and had no apparent or actual authority to receive service of process for ACH. Tellingly, IDQ's process server did not even attempt to verify the person's identity or if he was authorized to receive service of process on ACH's behalf. Jiang Dec. at ¶ 11. Rather, IDQ's process server left an unidentified packet of documents with a non-English speaker, who expressly indicated he was *not* an employee of ACH. *Id.* Indeed, the individual served most certainly was not authorized to receive such service, as clearly, he was not even employed by

ACH. *Id.* at ¶¶ 9-12. There simply are no facts that support IDQ's alleged service of ACH at the trade show in Las Vegas.

### B. ACKNOWLEDGING THE DEFECT OF THE SERVICE, COUNSEL FOR IDQ SOUGHT IMPROPER CONDITIONED EXTENSION

On November 5, 2015, following the first attempted service at the AAPEX trade show, IDQ informed the Court that service had been "completed," and based on IDQ's representation, the Court set a response deadline. Lavenue Dec. at ¶ 3. Once this deadline was set, counsel for ACH contacted counsel for IDQ and requested a 40-day extension of time to respond to the Complaint (noting the Thanksgiving and Christmas holidays). *Id.* at ¶ 4. Showing concern for the validity of the trade show "service," counsel for IDQ responded with a "conditioned extension," making the extension condition on an agreement "not to challenge service of the complaint at the trade show." *Id.* at ¶ 5. Notably, the condition extension demonstrates that IDQ recognized the deficiency of the service. Indeed, the conditional extension request from IDQ came before counsel for ACH even had time to analyze and assess the events that took place at the trade show, and it was only after IDQ's conditional request that counsel for ACH discovered the entirely defective and erroneous service. Thereafter, on November 16, 2015, counsel for ACH expressly refused the offer of a conditional extension and informed counsel for IDQ that ACH would move to quash the defective service.

### C. ACKNOWLEDGING THE DEFECT OF THE SERVICE, COUNSEL FOR IDQ SOUGHT IMPROPERLY TO SERVE COUNSEL FOR ACH

During a meet-and-confer between counsel for the parties on November 16, 2015, counsel for ACH clearly advised counsel for IDQ that service was defective and asked counsel for IDQ if it would oppose a motion to quash the ineffective service at the AAPEX trade show. Lavenue Dec. at ¶ 6. One day later, counsel for IDQ sent a letter to counsel for ACH, allegedly "serving" counsel for ACH with the summons and complaint. *Id.* at ¶ 7. Again, IDQ explicitly

demonstrated the defects in the attempted service at the trade show - or it would not have attempt yet another defective service. Indeed, this second defective service attempt on counsel for ACH would be unnecessary, if IDQ would simply serve ACH via the Hague Convention. But, IDQ continued with the errors.

There is no basis for IDQ to claim that ACH has been served by providing a copy to counsel for ACH under the Federal Rules. Counsel for ACH have also researched the issue, and there are no cases approving such service in the Fifth Circuit or in this District. Indeed, counsel for ACH did not find any legal support for such an attempt at service, save a single case in a state court in Massachusetts, but under distinguishable circumstances. Indeed, in *Renaud*, 9 Mass.L.Rptr. 692 (Mass. S. Ct. 1999), the state court did recognize service upon counsel for a foreign defendant, where there counsel had entered an unlimited notice of appearance in the case. Here, in contrast, before the filing of this motion, counsel for ACH had not entered any notice of appearance, and even the notice to file this motion was filed 'for special appearance," for the filing of this motion and the other required papers in this case due to IDQ's erroneous claim that the summons and complained had been properly served on ACH at the trade show. Oddly, even though IDQ knew that counsel for ACH had not entered a notice of appearance on behalf of ACH in this case, a fact that is publicly available and readily apparent to any person viewing the case docket, IDQ nonetheless attempted to "serve" counsel for ACH, knowing that there was on authorization by counsel for ACH to accept service – a point that had been made to counsel for IDQ during the negotiations of a possible wavier of service for ACH. Thus, attempted "service" on counsel for ACH is also *per se* improper and should be quashed.

## V. IDQ HAS NOT SERVED ACH UNDER THE HAGUE CONVENTION, AS REQUIRED

Rule 4 of the Federal Rules of Civil Procedure explicitly requires that service of process on a foreign defendant be effectuated "by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents." Fed. R. Civ. P. 4(f)(1). IDQ cannot, dispute that, because ACH is a Chinese entity located in China and not in the United States, IDQ is required to serve ACH under the Hague Convention. *See Kreimerman*, 22 F.3d at 640 (5th Cir. 1994); *see also Am. River Transportation*, 2004 WL 764181, at *2 (E.D. La. Apr. 7, 2004). A foreign defendant, such as ACH, is entitled to insist on proper service under the Hague Convention. *See Sheets*, 849 F.2d at 185 n.5 (5th Cir. 1988). And, particularly, here, where IDQ first failed to properly serve ACH personally at the trade show and then twice failed to legitimately serve counsel of record, IDS should now be required to serve ACH according to the proper procedures of the Federal Rules, i.e., per the Hague Convention.[2]

## VI. THIS COURT SHOULD QUASH THE IMPROPER SERVICE ATTEMPTS BY IDQ AND REQUIRE PROPER SERVICE, INCLUDING A STAY OF ALL DEADLINES IN THE CASE UNTIL PROPER SERVICE IS COMPLETED

If service is ineffective, then the district court has authority to quash the improper service. *Brown*, 89 Fed. Appx. at 439 (5th Cir. 2004) (recognizing district court's discretion to either dismiss a case for improper service of process or quash service) (emphasis added); see also *George*, 788 F.2d at 1116 (5th Cir. 1986) ("The district court enjoys a broad discretion in

[2] ACH acknowledges that the parties had discussed the potential waiver of service in exchange for an extended period of time to respond to the Complaint. But, before the parties reached an agreement, IDQ engaged in the failed attempt to personally serve ACH at the trade show. Therefore, given the fact that the parties had not yet reach an agreement regarding waiver of service, and due to the errors of the erroneous service at the trade show and the erroneous service on counsel, ACH chooses to assert its right to insist on proper service via the Hague Convention.

determining whether to dismiss an action for ineffective service of process."). Here, because all of the attempts by IDQ to serve Ach were improper, service should be quashed.

First, the attempted "service" by IDQ on ACH at the trade show was *per se* ineffective, at least because the individual to whom IDQ provided the summons and complaint was unaffiliated with ACH (not to mention that the person had absolutely no authority to receive the service for ACH). Second, the attempted "service" on counsel for ACH was likewise *per se* ineffective, as ACH is a foreign entity and had no counsel of record at the time of the attempted service. Therefore, the only two attempts at service were defective, and service should be fully quashed.

Further, it is also relevant to note that, after the attempted service at the trade show, IDQ inaccurately reported to the Court that defendant ACH had been properly served, when IDQ knew that it had not. This knowledge of questionable service by IDQ is demonstrated by the fact that, when counsel for ACH requested an extension to time to respond to the complaint, counsel for IDQ only offered a "conditional extension," only if ACH would not challenge the alleged service at the trade show. This knowledge of questionable service by IDQ is further demonstrated by the fact that, one day after counsel for ACH rejected the conditional extension during a meet and confer conference on November 16, 2015 for the instant motion to quash, counsel for IDQ then improperly attempted to serve counsel for ACH, just one day after counsel for ACH had notified IDQ of the service deficiencies. At no time has IDQ notified the Court that its notice of completed service was no longer accurate. Instead, IDQ has continued to press the case based on improper service but also improperly attempted to "fix" the service issue.

Because the Court was notified (prematurely, and erroneously) of "completed service" by IDQ, a scheduling conference was set for December 8, 2015, and this case is set to begin. Yet, ACH has still not been served. Thus, initiating the case is premature at this time, especially given

the nature of the erroneous notification of alleged service on ACH by IDQ. As noted by the Fifth Circuit, the district court has great discretion how to approach the issue of improper service, which also extend to staying any of the further deadlines in this case based on the erroneous misrepresentations to the Court by IDQ. *See George ,* 788 F.2d at 1116 (5th Cir. 1986) (noting the district court's broad when dealing with ineffective service of process.).

Accordingly, ACH respectfully requests that the Court should quash the purported "service of process" on ACH and require Plaintiff to properly serve ACH via the Hague Convention. *See R. Griggs*, 920 F. Supp. at 1102; *Penn Engineering*, 2:07-cv-01505, DI# 62 at 24-25 (D. Nev. Apr. 15, 2008). Also, ACH respectfully asks the Court should to stay all of the upcoming deadlines in the case until 90 days after ACH has been properly served in the case.

## VII. CONCLUSION: AS IDQ HAS FAILED TO SERVE ACH, SERVICE SHOULD BE QUASHED AND ACH ORDERED TO EFFECTUATE SERVICE VIA THE HAGUE CONVENTION, AND ALL FURTHER DEADLINES IN THE CASE SHOULD BE STAYED UNTIL 90 DAYS AFTER ACH HAS BEEN SERVED

IDQ knows that service of ACH is required under the Hague Convention, as the parties were negotiating a potential waiver of that requirement, before IDQ attempted service at the trade show. For these reason outlined herein, including the erroneous attempts to serve ACH, both at the trade show and on counsel, should be found ineffective and quashed. Further, IDQ should be ordered to effectuate proper service of ACH via the Hague Convention. Finally, all further deadlines in the case should also be stayed until 90 days after IDQ has completed serve.

Respectfully submitted,

Dated: November 19, 2015

*/s/ Lionel M. Lavenue*

Lionel M. Lavenue
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GARRETT & DUNNER, LLP
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11955 Freedom Drive

Reston, VA 20190
Phone: (571) 203-2700
Fax: (202) 408-4400

ATTORNEY FOR DEFENDANT
AEROSPACE COMMUNICATIONS
HOLDINGS CO., LTD. (for the limited purposes of this Motion to Quash Service as well as other necessary papers in the case[3])

[3] This is a limited appearance only, and it does not allow IDQ to serve counsel for ACH, which would allow IDQ to benefit from the ineffective attempts at service and continued refusal to follow proper procedures for proper service of a foreign company under the Hague Convention.

**CERTIFICATE OF CONFERENCE**

The Parties have complied with Local Rule CV-7(h). Counsel for both ACH and IDQ met and conferred via email on November 17 and 18. Communications were exchanged between Lionel M. Lavenue for ACH and Janine Carlan and Taniel Anderson for IDQ. Counsel for IDQ opposes this Motion to Quash.

/s/ *Lionel M. Lavenue*
Lionel M. Lavenue

**CERTIFICATE OF SERVICE**

I hereby certify that on November 19, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing ("NEF") to the following counsel of record who have appeared in this case on behalf of the identified parties:

/s/ *Lionel M. Lavenue*
Lionel M. Lavenue
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GARRETT & DUNNER, LLP
Two Freedom Square
11955 Freedom Drive
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Phone: (571) 203-2700
Fax: (202) 408-4400

*Counsel for Defendant Aerospace Communications Holdings Co., Ltd.* (for the limited purposes of this Motion to Quash Service)

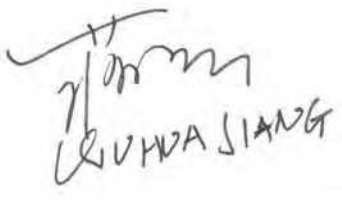
**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

| | |
|---|---|
| IDQ OPERATING, INC.,<br><br>Plaintiff,<br><br>vs.<br><br>AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.,<br><br>Defendant. | Case No. 6:15-cv-00781-JRG-KNM<br><br>**JURY TRIAL DEMANDED** |

**DECLARATION OF QIUHUA JIANG IN SUPPORT OF IN SUPPORT OF DEFENDANT AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.'S MOTION TO QUASH SERVICE OF THE COMPLAINT**

I, Qiuhua Jiang, being over 21 years of age, of sound mind, and capable of making this Declaration, declare and testify as follows:

1. I am employed as an engineer in car floor mats at Aerospace Communications Holdings Co., Ltd. ("ACH"). I make this declaration based on personal knowledge and following a reasonable investigation, and if called upon to testify, I could and would testify competently to the matters set forth below.
2. I understand that, on November 5, 2015, IDQ submitted documentation with the Court that ACH was served with a summons and complaint by a process server at AAPEX trade show in Las Vegas, Nevada, which took place from November 2, 2015 to November 5, 2015. I disagree that ACH was ever served in any way at the Las Vegas trade show.
3. I attended at the AAPEX trade show in Las Vegas, and neither I nor any employee of ACH at the trade show was provided with information from a process server.



4. The following statements are based on my investigation of the factual circumstances at the AAPEX trade show as well as my conversations with an employee of Zhejiang Litai Plastic Mould Co., Ltd.

5. I was present at the ACH booth at the AAPEX trade show in Las Vegas, Nevada on November 3, 2015, which is the date when IDQ alleges that a process server provided information to an employee of ACH, a factual allegation that is entirely incorrect.

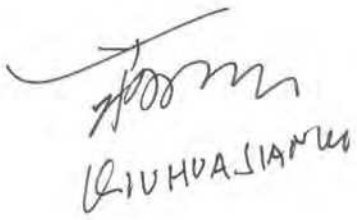
6. At the AAPEX trade show, ACH shared a booth with an independent OEM company, Zhejiang Litai Plastic Mould Co., Ltd.

7. Only engineers involved in car floor mats attended the trade show. There were no employees (engineers, managers, and/or officers) at the trade show for refrigerants.

8. At the AAPEX trade show, neither the ACH nor Zhejiang Litai Plastic Mould Co., Ltd. employees wore badges identifying themselves as an employee of either ACH or Zhejiang Litai Plastic Mould Co., Ltd.

9. At the AAPEX trade show, while I was away from the booth for part of the day for client meetings, I understand that a gentleman approached the booth and asked whether the registered contact person for ACH was present at the booth, and I also understand that the employee for Zhejiang Litai Plastic Mould Co., Ltd. informed the gentleman that I was not present nor were any employees of ACH. Nonetheless, a packet of documents were left at the booth.

10. When I returned to the booth, I was told of the visit by the employee for Zhejiang Litai Plastic Mould Co., Ltd., The Zhejiang Litai Plastic Mould Co., Ltd. employee did not know what the gentleman was doing at the booth, as he spoke some but not fluent



English, but he believed the packet to contain advertising materials, and therefore, did not pass on the packet to any of the ACH engineers.

11. Once I learned that IDQ alleged service on ACH at the trade show, I further investigated and determined that the gentlemen who left the packet of documents never identified himself as a process server, did not tell the employee of Zhejiang Litai Plastic Mould Co., Ltd. why he was at the booth, did not tell the employee of Zhejiang Litai Plastic Mould Co., Ltd. that he was trying to serve ACH, did not mention that the packet of documents contained a summons or complaint on ACH, did not ask for identification or business cards from any of the individuals at the booth at the time, and did not ask for a signature or other verification, when leaving the packet of documents. Indeed, the gentlemen apparently did not say anything else (after asking for if someone from ACH was at the booth), other than leaving the packet of information.

12. During my investigation of the circumstances surrounding the packet of documents, my understanding is that the employee of Zhejiang Litai Plastic Mould Co., Ltd. discarded the packet of information delivered by the process server, believing the packet to be advertising materials.

13. Therefore, no representative of ACH ever received the copy of the summons and complaint allegedly served on ACH at the AAPEX trade show on November 3, 2015.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 19, 2015

Name: Qiuhua Jiang
Title: Engineer in Car Floor Mats
Aerospace Communications Holdings Co., Ltd.

QIUHUA JIANG

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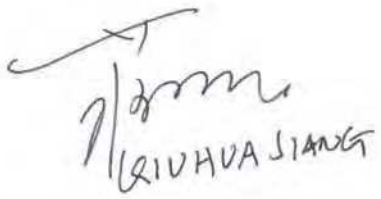


Name: Qiuhua Jiang
Title: Engineer in Car Floor Mats
Aerospace Communications Holdings Co., Ltd.

美国联邦地区法院
得克萨斯州东区
泰勒部

| | | |
|---|---|---|
| IDQ OPERATING, INC., | ) | |
| 原告 | ) | 案号：6:15-cv-00781-JRG-KNM |
| 诉 | ) | **要求陪审团审判** |
| 航天通信控股集团股份有限公司 | ) | |
| 被告 | ) | |

**蒋秋华支持被告航天通信控股集团股份有限公司提起的**
**宣告诉状送达无效动议的声明**

本人，蒋秋华，已年满 21 岁，心智健全，有能力做出声明，谨此声明并作证如下:

1. 本人受雇于航天通信控股集团股份有限公司(“ACH”)，职务为汽车脚垫工程师。基于个人所悉并经合理调查后，做出本声明，如被要求作证，本人有能力并且愿意就以下所述事项作证。

2. 本人知悉在 2015 年 11 月 5 日，IDQ 向法院提交文件称在内华达州拉斯维加斯举办的 AAPEX 展会上，一送达人将一份法院传票和诉状送达至 ACH。此展会日期为 2015 年 11 月 2 日至 5 日。本人不同意 ACH 曾经以任何方式在该拉斯维加斯展会中被送达。

3. 本人参加了拉斯维加斯的 AAPEX 展会，本人以及参加展会的 ACH 任何其他员工都未收到送达人提供的信息。

JIANGHUAQIU

4. 以下陈述是基于本人对在 AAPEX 展会事实情况的调查以及本人与浙江立泰塑模有限公司员工的谈话内容。

5. 2015 年 11 月 3 日，我在内华达州拉斯维加斯 AAPEX 展会的 ACH 展台现场。该日为 IDQ 声称有送达人向某 ACH 员工提供信息的日期，该项事实指控完全不正确。

6. 在 AAPEX 展会上，ACH 与另一独立的原始设备制造（OEM）公司，浙江立泰塑模有限公司，共用一个展台。

7. 只有汽车地板踏垫领域的工程师参加了展会。展会上没有和制冷剂有关的员工 (工程师、经理和/或管理人员)。

8. 在 AAPEX 展会上，没有 ACH 的员工或浙江立泰塑模有限公司的员工佩戴胸牌显示自己为 ACH 或浙江立泰塑模有限公司员工。

9. 在 AAPEX 展会期间，本人理解，在本人因客户会议离开站台期间，有一男性来到展台，并问询是否有 ACH 公司的展台联系人在展台，本人另外理解，浙江立泰塑模有限公司的员工告知该男性本人不在现场且现场没有任何其他 ACH 员工。但是，一个文件包裹被留在展台。

10. 当本人回到展台后，浙江立泰塑模有限公司员工告知本人上述来访。因为该浙江立泰塑模有限公司员工虽懂一些英文但无法流利表达，该员工并不了解上述男性在展台的行为，然而该员工认为遗留的文件包裹是广告材料，因此，并没有将该文件包递交给任何 ACH 的工程师。

11. 当本人知悉 IDQ 宣称其在展台对 ACH 做出送达后，本人进一步做出调查并确定遗留文件包裹的男性从未表明自己为送达人，并未告知浙江立泰塑模有限公司员工其到访展台的原因，并未告知浙江立泰塑模有限公司员工他是在试图对 ACH 进行送

QIUHUA SIANG

达，并未提及文件包裹包含针对 ACH 的法院传票或者诉状，并未要求任何当时在展台的人员出示证件或名片，在留下文件包时，并未要求签名或其他确认。确实，很明显的是该男性（在询问是否有 ACH 人员在展台之后）除了将文件包留在展台之外，未表达任何意思。

12. 在本人就该有关文件包裹的实际情况做出调查期间，本人的理解是浙江立泰塑模有限公司员工认为送达人遗留的文件包裹是广告材料，将该文件包丢弃。
13. 因此，没有任何 ACH 的代表人员曾经接收到被指控在 2015 年 11 月 3 日 AAPEX 展会期间送达给 ACH 的法院传票和诉状。

根据美国法典第 28 篇第 1746 条有关伪证罪的规定，本人谨声明以上所述正确属实。

日期： 2015 年 11 月 19 日

姓名: 蒋秋华
职务: 汽车脚垫工程师
航天通信控股集团股份有限公司

QIUHUAJIANG

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12. 在本人就该有关文件包裹的实际情况做出调查期间，本人的理解是浙江立泰塑模有限公司员工认为送达人遗留的文件包裹是广告材料，将该文件包丢弃。
13. 因此，没有任何 ACH 的代表人员曾经接收到被指控在 2015 年 11 月 3 日 AAPEX 展会期间送达给 ACH 的法院传票和诉状。

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日期： 2015 年 11 月 19 日

QIUHUAJIANG

姓名: 蒋秋华
职务: 汽车脚垫工程师
航天通信控股集团股份有限公司

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

| | |
|---|---|
| IDQ OPERATING, INC.,<br><br>Plaintiff,<br><br>vs.<br><br>AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.,<br><br>Defendant. | Case No. 6:15-cv-00781-JRG-KNM<br><br>**JURY TRIAL DEMANDED** |

**DECLARATION OF LIONEL LAVENUE IN SUPPORT OF AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.'S MOTION TO QUASH SERVICE OF THE COMPLAINT**

I, Lionel Lavenue, declare as follows:

1. I am lead counsel for Defendant Aerospace Communications Holdings Co., Ltd ("ACH"). I am knowledgeable about the facts set forth herein and make this declaration in support of Aerospace Communications Holdings Co., Ltd.'s Motion to Quash Service of the Complaint.
2. Beginning at least in October 2015, the parties began discussions regarding a potential waiver of service. Specifically, the parties were negotiating waiver of formal service via the Hague Convention in exchange for a 120-day extension of time to respond to the Complaint.
3. On November 5, 2015, counsel for IDQ filed, albeit erroneously, a notice that service had been completed, allegedly based on service at the AAPEX trade show on November 3, 2015.

4. Approximately on or after November 5, 2015, I contacted counsel for IDQ and requested a 40-day extension of time to respond to the Complaint.
5. During the week of November 9, 2015, rather than agree to the extension, or offer a shorter extension, counsel for IDQ stated that any extension of time to respond to the Complaint would be conditioned upon ACH's agreement "not to challenge service."
6. On November 16, 2015, the parties conducted a meet-and-confer conference. At that conference, I informed counsel for IDQ that the attempted service upon ACH at the trade show was improper and ineffective and that ACH planned to move to quash service.
7. On November 17, 2015, one day after the meet-and-confer when I advised counsel for IDQ that ACH planned to move to quash service, counsel for IDQ sent a letter to me, attempting to serve the Complaint on me. I immediately responded that this attempted service was "desperate and improper" and that "I do not accept service for ACH" as "I have not entered a notice of appearance, and my forthcoming notice of appearance for ACH will only by special appearance to contest service and other required tasks."
8. On November 18, 2015, counsel for IDQ advised that IDQ opposed the motion to quash.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 19, 2015

Lionel M. Lavenue
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
Two Freedom Square
11955 Freedom Drive

Reston, VA 20190
Phone: (571) 203-2700
Fax: (202) 408-4400

ATTORNEY FOR DEFENDANT
AEROSPACE COMMUNICATIONS
HOLDINGS CO., LTD. (for the limited purposes of this Motion to Quash Service as well as other necessary papers in the case[1])

[1] This is a limited appearance only, and it does not allow IDQ to serve counsel for ACH, which would allow IDQ to benefit from the ineffective attempts at service and continued refusal to follow proper procedures for proper service of a foreign company under the Hague Convention.

# EXHIBIT 1

# Aerospace Communications Holding Co., Ltd.

Hangzhou, Zhejiang,
China
http://www.aerocom.cn

Booth: 5817

## Categories

**Steering**
- Steering

As a state owned company, Aerospace Communications Holdings, Co., Ltd was founded in 1987 and listed in Shanghai stock exchange (code:600677).

Main Automotive Products :

Auto A/C Refrigerant R134a

Car Floor Mat

Steering Wheel Cover

Car Cover

Seat Cover

Key Figures:

21 holding factories and companies all over the China

16000 employees

Over 9 billion CNY (1.46 Billion USD) annual turnover

**Brands:** Aerospace

## Onsite Contact

### Onsite Contact Name.

Jiang Qiuhua

### Onsite Contact Title

SALE MANAGER

### Onsite Contact Email

bruce@zhonghuico.com

Back to the Search

# EXHIBIT 2

Every year, tens of thousands of professionals from around the globe attend AAPEX for cutting-edge education, unparalleled networking opportunities and access to the latest technologies and solutions from domestic and international suppliers. Don't miss the automotive aftermarket industry's premier event - registration will be open in Spring 2016!

Click here to receive the attendee registration link once it becomes available ➔

## Admission Costs for 2015

Attendee registration includes access to the Expo Floor for AAPEX and the SEMA Show, and to AAPEXedu and ExpressEdu education sessions. No refunds will be provided.

| Category | Fee |
|---|---|
| Attendee Registration Online (through October 16) | $25.00 |
| Attendee Registration by Fax or Mail (through October 16) | $50.00 |
| Attendee Registration Onsite (Starting October 17)<br>Note: Online registration will still be available, but the show badges will have to be picked up onsite | $75.00 |
| Non-Exhibiting Manufacturers/Supplies/Importers/Exporters | $200.00 |

## Registration Requirements

Only business representatives of the automotive aftermarket industry are permitted to attend AAPEX. All registrants are subject to review and approval by AAPEX Management. Once approved, confirmation will be sent to registrants via email regarding the status of their badges. The following business representatives are NOT allowed to attend:

- Consumers
- Any non-automotive affiliated company
- Attorneys
- Freight providers
- Travel agencies
- Non-automotive graphics companies
- Exhibition industry affiliates
- Independent insurance agents
- Modeling agencies
- Printers/Packaging

# Proof of Affiliation

First time registrants may be asked to provide proof of their affiliation in the automotive trade. Business identification must indicate current employment at an automotive-related company. Any two (2) of the following are acceptable:

- Tax registration certificate or business registration
- Business license
- Two (2) recent paycheck stubs to verify employment
- Copy of Yellow Pages listing
- Copy of advertisement
- Business card (must include job title, and company name and address must correspond with the information on the registration form)
- Business photo ID (must include name, photo and company name)

Your principal business category will be determined by AAPEX Management based on your company website. Non-Exhibiting Manufacturers are limited to two badges per company.

# International Visitors

Some useful links for our international visitors:

- Information on obtaining a U.S. Travel Visa
- United States Transportation Security Administration
- United States Department of Homeland Security
- United States Department of State

# More Questions About AAPEX 2015?

See our Attendees FAQs for more information.

AAPEX 2015
Education: November 2-5, 2015
Exhibits: November 3-5, 2015
Sands Expo
Las Vegas, NV

Co-owned by:

## For Attendees

Attendee Registration →
Discounted Hotels →
Frequently Asked Questions →

## For Exhibitors

Exhibit at AAPEX →
Exhibitor Registration →
Discounted Hotels →
Sponsorship Opportunities →
New Products & Packaging Showcase →
Intellectual Property Rights Policy →
Frequently Asked Questions →

## Stay Connected

# EXHIBIT 3

Arent Fox

Arent Fox LLP / Attorneys at Law
Los Angeles, CA / New York, NY / San Francisco, CA / Washington, DC
www.arentfox.com

November 17, 2015

**Taniel Anderson**
Associate
202.857.6320 DIRECT
202.857.6395 FAX
taniel.anderson@arentfox.com

VIA FEDEX AND EMAIL

Lionel M. Lavenue
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
Two Freedom Square
11955 Freedom Drive, Suite 800
Reston, VA 20190-5675
Tel: 571.203.2750

Re: *IDQ Operating, Inc. v. Aerospace Commc'ns Holdings, Co., Ltd.*, No. 6:15-cv-781-JRG-KNM (E.D. Tex.)

Dear Lionel:

We write on behalf of Plaintiff IDQ Operating, Inc. ("IDQ") regarding the above-captioned case. During yesterday's the Rule 26(f) conference, you indicated that your client Aerospace Communications Holdings, Co., Ltd. ("ACH") intended to challenge the sufficiency of the service duly effected on it in Las Vegas, Nevada on November 3, 2015. We have reviewed the circumstances of that service and can discern no legitimate reason for contending that it was not effective. Nevertheless, as you appear willing to contest this, and to avoid needless procedural maneuvering, we are hereby additionally serving the enclosed summons and complaint on ACH through you as its counsel.

Sincerely,

Taniel Anderson

Enclosures

AO 440 (Rev. 12/09) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Eastern District of Texas

IDQ Operating, Inc.

*Plaintiff*

v.

Aerospace Communications Holdings Co., Ltd.

*Defendant*

Civil Action No. 6:15-cv-781

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Aerospace Communications Holdings Co., Ltd.
No. 2 AeroCom Building
No. 138 Jiefang Road
Hangzhou, China 310009

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Allen F. Gardner
Potter Minton, PC
110 North College, Suite 500
Tyler, Texas 75702

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: **8/17/15**

David Maland

*Signature of Clerk or Deputy Clerk*

Civil Action No. 6:15-cv-781

**PROOF OF SERVICE**

***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))***

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☑ Other *(specify):* I served Lionel M. Lavenue, Esq., attorney for Defendant Aerospace Communications Holdings, Co., Ltd., by sending a copy of the summons via FedEx to his business address for delivery on November 18, 2015. See "Service Address" below.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 11/17/2015

*Server's signature*

Justin Parady, Senior Paralegal
*Printed name and title*

Arent Fox LLP
1717 K Street, NW
Washington, DC 20006
*Server's address*

Additional information regarding attempted service, etc:
Service Address:
Lionel M. Lavenue
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
11955 Freedom Drive, Suite 800
Reston, VA 20190-5675

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

IDQ OPERATING, INC.,

Plaintiff,

v.

AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.

Defendant.

C.A. No. 6:15-cv-781

**JURY TRIAL DEMANDED**

## COMPLAINT

Plaintiff IDQ Operating, Inc. ("IDQ"), by its undersigned counsel, for its Complaint against Defendant Aerospace Communications Holdings Co., Ltd. ("Defendant"), hereby alleges as follows:

## THE PARTIES

1. Plaintiff IDQ is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 2901 West Kingsley Road, Garland, Texas 75041.

2. Upon information and belief, Defendant is a corporation organized and existing under the laws of the People's Republic of China, with its principal place of business at No. 2 AeroCom Building, No. 138 Jiefang Road, Hangzhou, China 310009.

3. On information and belief, Defendant offers for sale products in the United States that are regularly sold by its customers in the State of Texas and in this judicial district.

## JURISDICTION AND VENUE

4. This is an action for patent, trademark, and copyright infringement arising under the United States patent, trademark, and copyright laws, Titles 35, 15, and 17 of the United States Code, respectively; for unfair competition under the United States trademark laws, 15 U.S.C. § 1114 (Lanham Act); for unfair competition and unjust enrichment under Texas statutory and common law; for tortious interference with prospective business relations under Texas common law; and for false patent marking under the United States patent laws, 35 U.S.C. § 292.

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the United States patent, trademark, and copyright laws, Titles 35, 15, and 17 of the United States Code, respectively. This Court has supplemental jurisdiction over the Texas state law claims pursuant to 28 U.S.C. § 1367 because such claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

6. On information and belief, this Court has personal jurisdiction over Defendant because Defendant has committed and continues to commit acts of patent, trademark, and copyright infringement and other tortious acts causing harm in this judicial district and elsewhere in Texas by marketing and offering to sell products that infringe IDQ's patent, trademark, and copyright rights, or in a manner that induces infringement of IDQ's patent rights, or in a manner that infringes IDQ's trademarks and copyrights, entitling IDQ to relief.

7. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b).

## IDQ'S PRODUCTS AND INTELLECTUAL PROPERTY

8. IDQ originated and is the recognized leader in the category of "do-it-yourself" products for adding refrigerant ("recharging") to vehicle air conditioners that have lost refrigerant over time. Before IDQ's innovations, typically only professional mechanics recharged vehicle air conditioners, which was often time-consuming and expensive.

9. Just over a decade ago, IDQ introduced a revolutionary product including refrigerant in a container, with a delivery hose and a "quick connect" coupler for connection to the vehicle air conditioner. This product enabled consumers to add refrigerant themselves, as needed, without the expense and time of taking the vehicle in for service. Some versions of the product additionally included a gauge for measuring pressure in the vehicle air conditioner.

10. IDQ's recognized brands of do-it-yourself refrigerant kits include A/C PRO®, ARCTIC FREEZE®, SUB-ZERO®, EZ CHILL®, and BIG CHILL® (together, the "All-in-One Products"). IDQ refers to these products as "All-in-One" because they include everything consumers need to service vehicle air conditioners.

11. IDQ's All-in-One Products are marketed throughout the United States by retail establishments such as those operated by AutoZone, Inc., The Home Depot U.S.A. Inc., Advance Auto Parts, Inc., Meijer, Inc., National Automotive Parts Association, O'Reilly Auto Parts, Pep Boys, Wal-Mart Stores, Inc., and Kmart Corporation.

12. IDQ manufactures its All-in-One Products in its facility in Garland, Texas, and stores the products in a warehouse near that facility.

13. As a service to consumers using its products, IDQ maintains a website at www.idqusa.com that presents detailed instructions, videos, product descriptions, news, and other information about the All-in-One Products, and in particular, contains an ASK THE PRO®

section where consumers can obtain access to online help, e-mail assistance, or help over the telephone. Further, IDQ includes numerous videos on its website that demonstrate how to recharge a vehicle air conditioner with IDQ's All-in-One Products.

14. In addition to its website, IDQ provides consumers with printed materials and labels, including detailed instructions, for its All-in-One Products.

15. IDQ has authored and owns all content available on its www.idqusa.com website and all content of its printed materials and labels for its All-in-One Products.

16. IDQ's labels, web site at www.idqusa.com and content, brochures, policies, images, and videos therein constitute copyrightable subject matter under the U.S. Copyright Act of 1976 (the "U.S. Copyright Act"), 17 U.S.C. § 101 *et seq.*, and are entitled to protection thereunder.

17. At all relevant times, IDQ was and is the sole and exclusive owner of all right, title, and interest in and to the copyrights for IDQ's copyrighted works as set forth herein. IDQ is the applicant in pending applications for copyright registrations for the works titled "SUB-ZERO label," "EZ CHILL label" and "Transcript for Video 'How to Recharge Your Car AC with A/C PRO'" electronically filed on an expedited basis on August 13, 2015 and the work titled "IDQUSA.COM website (2012 version)" electronically filed on an expedited basis on August 14, 2015 with the U.S. Copyright Office. These applications were assigned the following Case/SR## 1-2634224422, 1-2634224351, 1-2634224517, and 1-2640414141, respectively (hereinafter individually and collectively referred to as "Copyrighted Works").

18. IDQ has invested significant time and resources in developing and obtaining intellectual property related to the All-in-One Products, including, but not limited to, patents, trademarks, and copyrights.

19. United States Patent No. 7,260,943 (the " '943 patent") titled "Apparatus and Method for Servicing a Coolant System" was duly and legally issued by the United States Patent and Trademark Office on August 28, 2007. A true and correct copy of the '943 patent is attached hereto as Exhibit A.

20. IDQ owns all right, title, and interest in and to the '943 patent.

21. IDQ marks its A/C PRO® and ARCTIC FREEZE® products with the '943 patent number. *See* photographs attached as Exhibit B.

22. On November 20, 2012, the United States Patent and Trademark Office registered the mark ASK THE PRO® for "vehicle air conditioning technological consultation services in connection with the maintenance of vehicle air conditioners; vehicle air conditioning technological consultation services in connection with the repair of vehicle air conditioners; vehicle air conditioning web site consultation in connection with the maintenance of vehicle air conditioners; vehicle air conditioning web site consultation in connection with the repair of vehicle air conditioners" with Registration No. 4,244,354. A true and correct copy of the registered ASK THE PRO® mark is attached as Exhibit C.

23. IDQ owns all right, title, and interest in and to the ASK THE PRO® mark.

**DEFENDANT'S ACTS GIVING RISE TO THIS ACTION**

24. Upon information and belief, Defendant is in the business of manufacturing and supplying air conditioning refrigerant ("AeroCool R-134a refrigerant"). Defendant offers its AeroCool R-134a refrigerant as part of a vehicle air conditioner recharging system manufactured by Defendant that includes a container for the refrigerant, a trigger dispenser, a hose, a gauge, and a connector (together, the "AeroCool R-134a Product" or the "Product" or "Products"). Upon information and belief, Defendant offers its Products for sale in the United States to one or

more retailers, who in turn sell those Products in this judicial district. Specifically, Defendant's AeroCool R-134a Product can be purchased in this judicial district, in at least, the Tyler Walmart Supercenter located at 6801 S. Broadway Ave., Tyler, Texas, 75703. *See* photograph and receipt attached as Exhibit D.

25. Defendant, through these practices, is unfairly trading on the goodwill, marketing and development efforts, and intellectual property of IDQ.

26. Defendant's website at www.aerocousa.com contains numerous web pages and other content copied directly from IDQ's website. *See* Exhibit E.

27. Defendant uses the phrase "Ask the Pro" on its website in a manner that is confusingly similar to IDQ's mark ASK THE PRO®.

28. Defendant provides on its website an instructional video having a transcript almost identical to that of IDQ's instructional video entitled "How to Recharge Your Car AC with A/C PRO" provided on IDQ's web site. *See* printout of web page displaying link to video on Defendant's web site and printout of web page displaying link to video on IDQ's web site, Exhibit F.

29. Defendant has further copied printed materials, including instructions and labeling, from IDQ's All-in-One Products and has used those copies for its own AeroCool R-134a Product and on its web site.

30. Defendant is aware of the '943 patent, at least because IDQ has marked the '943 patent number on its A/C PRO® and ARCTIC FREEZE® products and because Defendant's Product is substantially identical to the embodiment shown in Figure 11 of the '943 patent.

31. Upon information and belief, Defendant sells its AeroCool R-134a Product to retailers located in the United States and this judicial district knowing and intending that these

retailers will then sell Defendant's AeroCool R-134a Product to consumers in the United States and this judicial district and knowing and intending that these consumers will recharge their vehicle air conditioners using the AeroCool R-134a Product in a manner that infringes the '943 patent and these consumers then use the AeroCool R-134a Product in a manner that directly infringes the '943 patent.

32. Defendant has directly infringed, or induced or contributed to the infringement of the '943 patent by offering for sale in the United States the AeroCool R-134a Product and inducing consumers, through instructions Defendant makes available to those consumers, to use the Product in a manner that infringes the '943 patent in the United States and in this judicial district and these consumers then use the AeroCool R-134a Product in a manner that directly infringes the '943 patent.

33. Defendant's actions have damaged IDQ in an amount yet to be ascertained, and has irreparably harmed, and continues to irreparably harm IDQ, including by usurping IDQ's sales and business opportunities.

**COUNT I**

**(Infringement of the '943 Patent)**

34. IDQ realleges paragraphs 1-33 as if fully set forth herein.

35. Defendant has directly infringed and continues to directly infringe one or more claims of the '943 patent, either literally or under the doctrine of equivalents, by offering for sale the AeroCool R-134a Product that embodies each element of at least one claim of the '943 patent, without the authorization, consent, or permission of IDQ with such acts constituting acts of patent infringement under 35 U.S.C. § 271.

36. Since at least May 2015, Defendant has knowingly and intentionally induced, and continues to knowingly and intentionally induce, others throughout the United States and in this judicial district to use, sell, offer for sale, and/or import the AeroCool R-134a Product in a manner that Defendant knows and intends to infringe the '943 patent, including by offering its AeroCool R-134a Product for sale to retailers, and explicitly promoting to consumers and instructing those consumers in the use of its AeroCool R-134a Product with such acts constituting acts of patent infringement under 35 U.S.C. § 271. These consumers then use the AeroCool R-134a Product in a manner that directly infringes the '943 patent.

37. Defendant has contributed to the infringement of the '943 patent and continues to do so by offering its AeroCool R-134a Product for sale to retailers in the United States and this judicial district, knowing that this Product and its use directly infringe the '943 patent, constitute a material part of the invention, were especially made or especially adapted for use in infringement of the '943 patent, and have no substantial non-infringing uses with such acts constituting acts of patent infringement under 35 U.S.C. § 271.

38. Defendant's past and continuing infringement of the '943 patent has damaged IDQ in an amount to be determined at trial.

39. Defendant's past and continuing infringement of the '943 patent has irreparably harmed IDQ, and Defendant's infringement will continue, unless enjoined by this Court pursuant to 35 U.S.C. § 283.

40. Upon information and belief, Defendant's infringement has been, and will continue to be, willful, making this an exceptional case and entitling IDQ to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285. Defendant is aware of the '943 patent, at least because IDQ has marked the '943 patent number on its A/C PRO® and

ARCTIC FREEZE® products. Defendant's knowledge of the '943 patent is also shown by Defendant's copying of the embodiment shown in Figure 11 of the '943 patent. This copying also shows that Defendant is aware that its acts constituted infringement of the '943 patent.

**COUNT II**

**(Trademark Infringement)**

41. IDQ realleges paragraphs 1-40 as if fully set forth herein.

42. IDQ is the owner of Federal Trademark Registration No. 4,244,354, which issued on November 20, 2012, on the Principal Register of the United States Patent and Trademark Office. The registration for the mark ASK THE PRO® covers the following services: "vehicle air conditioning technological consultation services in connection with the maintenance of vehicle air conditioners; vehicle air conditioning technological consultation services in connection with the repair of vehicle air conditioners; vehicle air conditioning web site consultation in connection with the maintenance of vehicle air conditioners; vehicle air conditioning web site consultation in connection with the repair of vehicle air conditioners."

43. IDQ first used the mark ASK THE PRO® in commerce on May 1, 2011, and has used it continually since. IDQ has neither canceled nor abandoned the mark ASK THE PRO®. IDQ has invested substantial time, effort, and financial resources promoting the mark ASK THE PRO® and it has become an asset of substantial value as a symbol of IDQ, its goodwill, and its services provided in connection with its products.

44. IDQ's ASK THE PRO® mark is inherently distinctive as used in conjunction with IDQ's services provided in connection with its products.

45. Notwithstanding IDQ's established rights in the mark ASK THE PRO®, Defendant has used and continues to use the ASK THE PRO® mark on Defendant's website in a

manner that is confusingly similar to the use of IDQ's mark on its own IDQ website. *See* web pages from Defendant's web site and IDQ's web site, Exhibit G.

46. Defendant has engaged in its infringing activity despite having constructive notice of IDQ's federal registration rights under 15 U.S.C. § 1072.

47. Upon information and belief, and based on the substantial copying of language on IDQ's website, Defendant has advertised and offered its services and goods for sale using the ASK THE PRO® mark with the intention of misleading, deceiving, or confusing consumers as to the origin of its services and goods and trading on IDQ's reputation and goodwill.

48. Defendant's unauthorized use of the ASK THE PRO® mark constitutes trademark infringement under 15 U.S.C. § 1114(1) and is likely to cause consumer confusion, mistake, or deception.

49. As a direct and proximate result of Defendant's trademark infringement, IDQ has suffered and will continue to suffer loss of income, profits, and goodwill, and Defendant has and will continue to unfairly acquire income and profits.

50. Defendant's acts of infringement will cause further irreparable injury to IDQ if Defendant is not restrained by this Court from further violation of IDQ's rights. IDQ has no adequate remedy at law.

**COUNT III**

**(Copyright Infringement)**

51. IDQ realleges paragraphs 1-50 as if fully set forth herein.

52. IDQ is the exclusive owner of all right, title, and interest in and to IDQ's Copyrighted Works. IDQ has applied for registrations with the U.S. Copyright Office for its Copyrighted Works related to its All-in-One Products.

53. Defendant has distributed a web site and content therein, including videos, printed materials, and labels to the public in the United States and this judicial district that are substantially similar to IDQ's Copyrighted Works, in violation of the exclusive rights granted to IDQ under 17 U.S.C. § 106.

54. IDQ's Copyrighted Works are protectable subject matter under the U.S. Copyright Act.

55. Defendant's reproduction and distribution of IDQ's Copyrighted Works (or of content derived from IDQ's Copyrighted Works) and/or content substantially similar to IDQ's Copyrighted Works, constitute infringement of IDQ's copyrights therein in violation of 17 U.S.C. § 501(a).

56. Pursuant to 17 U.S.C. § 504, IDQ is entitled to recover from Defendant the damages it has sustained and will sustain as a result of Defendant's wrongful acts as alleged above in an amount to be established at trial, and IDQ is further entitled to recover from Defendant the profits Defendant made from the wrongful acts.

## COUNT IV

## (Unfair Competition Under the Lanham Act)

57. IDQ realleges paragraphs 1-56 as if fully set forth herein.

58. Defendant includes on the container for its Product an address for a Post Office Box in Hoover, Alabama allegedly to which a consumer can write in order to obtain assistance in the use of the Product. *See* photographs of relevant portions of AeroCool R-134a Product, Exhibit H.

59. On information and belief, the address that Defendant places on its Product does not correspond to any physical address or facility owned or maintained by Defendant in Hoover, Alabama or in any location anywhere in the United States.

60. Defendant thus places the Hoover, Alabama address on its Product to create in the mind of the consumer the false and erroneous impression that Defendant has a presence in the United States, and particularly in Alabama, when in fact it does not.

61. Defendant is thus using a false or misleading description of fact, or false or misleading representation of fact, which in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of its goods, services, or commercial activities with such acts constituting acts of unfair competition in violation of 15 U.S.C. § 1125(a).

62. Upon information and belief, Defendant's unfair competition has been willful and malicious, constituting an exceptional case under 15 U.S.C. §1117(a).

63. As a direct result of Defendant's unlawful and unfair competition, IDQ has suffered and continues to suffer damages in the United States and this judicial district.

**COUNT V**

**(Unfair Competition Under Texas Law)**

64. IDQ realleges paragraphs 1-63 as if fully set forth herein.

65. Defendant's use of IDQ's mark, misappropriation of IDQ's Copyrighted Works, misrepresentations as to its presence in the United States, and in general free riding on the time, effort, and expense IDQ has invested in creating and supporting the "All-in One" Product category and its brands in that category, constitute acts of unfair competition under the statutory and common law of unfair competition of the State of Texas.

66. Defendant has improperly used and improperly sought to benefit from the efforts, goodwill, and reputation of IDQ.

67. As a direct result of Defendant's unlawful and unfair competition, IDQ has suffered and continues to suffer damages in the United States and this judicial district.

**COUNT VI**

**(Unjust Enrichment Under Texas Common Law)**

68. IDQ realleges paragraphs 1-67 as if fully set forth herein.

69. Defendant's use of IDQ's mark, misappropriation of IDQ's Copyrighted Works, misrepresentations as to its presence in the United States, and in general free riding on the time, effort, and expense IDQ has invested in creating and supporting the "All-in One" Product category and its brands in that category, constitute acts of unjust enrichment under the common law of the State of Texas.

70. Defendant has improperly sought to usurp benefit to itself from the efforts, goodwill, and reputation of IDQ.

71. As a direct result of Defendant's unjust enrichment, IDQ has suffered and continues to suffer damages in the United States and this judicial district.

**COUNT VII**

**(Tortious Interference With Prospective Business Relations)**

72. IDQ realleges paragraphs 1-71 as if fully set forth herein.

73. IDQ, by and through its use of its ASK THE PRO® mark, was reasonably likely to enter into business relations with prospective consumers.

74. On information and belief, Defendant intentionally interfered with IDQ's prospective, foreseeable business relations by infringing IDQ's patent rights, inducing and contributing to infringement of those patent rights by others, diluting IDQ's trademark, and creating confusion in the market about IDQ's trademark.

75. Defendant's activities were and are independently tortious and unlawful.

76. Defendant's tortious interference has caused injury to IDQ directly and has detrimentally impacted IDQ's ability to consummate its prospective business relations with its customers.

77. As a direct result of Defendant's tortuous interference, IDQ has suffered and continues to suffer damages in the United States and this judicial district.

**COUNT VIII**

**(False Marking Under 35 U.S.C. § 292)**

78. IDQ realleges paragraphs 1-76 as if fully set forth herein.

79. Defendant marks and has marked the container of its AeroCool R-134a Product with the term "PAT. NO. PENDING" implying that an application for a U.S. patent has been

made for all or some portion of that Product. *See* photograph of relevant portion of AeroCool R-134a Product, Exhibit I.

80. On information and belief, despite this marking, Defendant has not filed or caused to be filed any patent application in the United States for all or some portion of its AeroCool R-134a Product. Defendant's marking of the container portion of its AeroCool R-134a Product is thus false and misleading.

81. Defendant knew or reasonably should have known that it had not filed or caused to be filed any patent application in the United States for all or some portion of its AeroCool R-134a Product. Defendant knew or reasonably should have known that marking the AeroCool R-134a Product with a term indicating that a patent application was pending was false marking in violation of 35 U.S.C. § 292. Defendant also has control over the false marking of its AeroCool R-134a Product. Defendant is thus acting with the purpose and intent of deceiving the public in violation of 35 U.S.C. §292(b).

82. IDQ has suffered economic damage as a result of Defendant's intentional false marking of the AeroCool R-134a Product.

83. Each time Defendant offers to sell refrigerant dispensing systems containing false patent markings within the United States, such as described above, Defendant commits at least one "offense" as defined in 35 U.S.C. § 292(a).

## PRAYER FOR RELIEF

WHEREFORE, IDQ respectfully requests that the Court:

a) Declare that Defendant has directly infringed, induced others to infringe, and/or contributed to the infringement of the '943 patent;

b) Declare that Defendant has willfully infringed IDQ's patent rights, as asserted herein;

c) Declare that Defendant has infringed IDQ's mark ASK THE PRO®, as asserted herein;

d) Declare that Defendant has infringed IDQ's rights in IDQ's Copyrighted Works, as asserted herein;

e) Permanently enjoin Defendant from directly infringing, inducing others to infringe, or contributing to the infringement of the '943 patent, including by specifically prohibiting Defendant and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with them, from manufacturing, using, importing, selling, and offering to sell, in the United States any product that falls within the scope of any claim of the '943 patent and from providing instructions on how to use any product in an infringing manner;

f) Order an accounting for all monies received by or on behalf of Defendant and all damages sustained by IDQ as a result of Defendant's infringements;

g) Order Defendant to recall all infringing Products from its customers;

h) Award IDQ damages in an amount to be demonstrated at trial adequate to compensate IDQ fully for damages caused by Defendant's direct and indirect infringement of the '943 patent, IDQ's trademark ASK THE PRO®, and IDQ's Copyrighted Works;

i) Award IDQ increased damages pursuant to 35 U.S.C. § 284;

j) Award IDQ its reasonable attorneys' fees and litigation expenses, pursuant to 35 U.S.C. § 285;

k) Award IDQ prejudgment interest and costs pursuant to 35 U.S.C. § 284;

l) Permanently enjoin and restrain Defendant and each of its agents, employees, officers, attorneys, successors, assigns, affiliates, and any persons in privity or active concert or participation with any of them from using the mark ASK THE PRO®;

m) Pursuant to 15 U.S.C. § 1116(a), direct Defendant to file with the Court and serve on IDQ within thirty (30) days after issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

n) Pursuant to 15 U.S.C. § 1118, require Defendant, at its cost, to deliver and destroy all materials in its possession and all web pages and content in its control bearing the infringing mark;

o) Award to IDQ all profits received by Defendant from sales and revenues of any kind made as a result of its infringing actions, said amount to be trebled, after an accounting pursuant to 15 U.S.C. § 1117;

p) Permanently enjoin Defendant from infringing IDQ's Copyrighted Works, including by specifically prohibiting Defendant and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with them, from infringing IDQ's Copyrighted Works;

q) Pursuant to 17 U.S.C. § 503, direct the impoundment and destruction or the complete erasure of all materials made or used by Defendant and its agents in violation of IDQ's exclusive rights in its Copyrighted Works, including, but not limited to, all digital and printed materials, content and products that are substantially similar or incorporate IDQ's Copyrighted Works;

r) Pursuant to 17 U.S.C. § 504(b), award damages to IDQ from Defendant in an amount to be determined by applicable law;

s) Pursuant to 35 U.S.C. § 292, award damages to IDQ from Defendant adequate to compensate IDQ for the commercial and other economic injury suffered by IDQ as a result of Defendant's false marking;

t) Declare this case to be exceptional and award IDQ its reasonable and necessary attorneys' fees and court costs in prosecuting this action; and

u) Award IDQ such other and further relief as the Court may deem just and proper.

**REQUEST FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38, IDQ hereby demands trial by jury as to all issues so triable in this action.

Dated: August 17, 2015

Respectfully submitted by:

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**COUNSEL FOR PLAINTIFF**
**IDQ OPERATING, INC.**

# EXHIBIT A

US007260943B2

# (12) United States Patent
Carrubba et al.

(10) Patent No.: US 7,260,943 B2
(45) Date of Patent: Aug. 28, 2007

(54) **APPARATUS AND METHOD FOR SERVICING A COOLANT SYSTEM**

(75) Inventors: **Vincent Carrubba**, Tarrytown, NY (US); **Ken Motush**, Tarrytown, NY (US)

(73) Assignee: **Interdynamics, Inc.**, Tarrytown, NY (US)

( * ) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 163 days.

(21) Appl. No.: **10/975,816**

(22) Filed: **Oct. 29, 2004**

(65) **Prior Publication Data**

US 2005/0217285 A1 Oct. 6, 2005

**Related U.S. Application Data**

(60) Provisional application No. 60/516,552, filed on Oct. 31, 2003.

(51) **Int. Cl.**
***F25B 45/00*** (2006.01)
***F25B 17/00*** (2006.01)
***F16K 37/00*** (2006.01)

(52) **U.S. Cl.** ..... **62/77**; 62/146; 137/229

(58) **Field of Classification Search** ..... 62/77, 62/146, 149, 292, 299, 408, 410; 137/292, 137/315, 315.16, 315.39, 315.14, 229; 73/299
See application file for complete search history.

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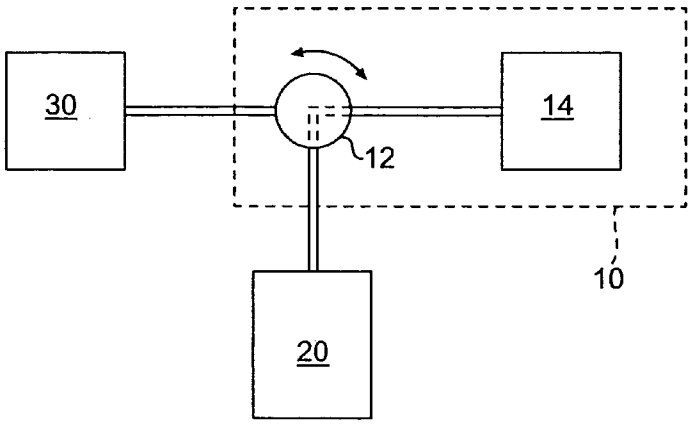
*Primary Examiner*—Mohammad M. Ali
(74) *Attorney, Agent, or Firm*—Plumsea Law Group, LLC

(57) **ABSTRACT**

An apparatus, system and method for servicing a coolant system, such as, an automobile air conditioner are disclosed. In one embodiment, the apparatus may comprise a device for measuring a parameter of the coolant system; and means for selectively switching between providing: (i) communication between the coolant system and said measuring device, and (ii) communication between the coolant system and the coolant supply.

**38 Claims, 16 Drawing Sheets**



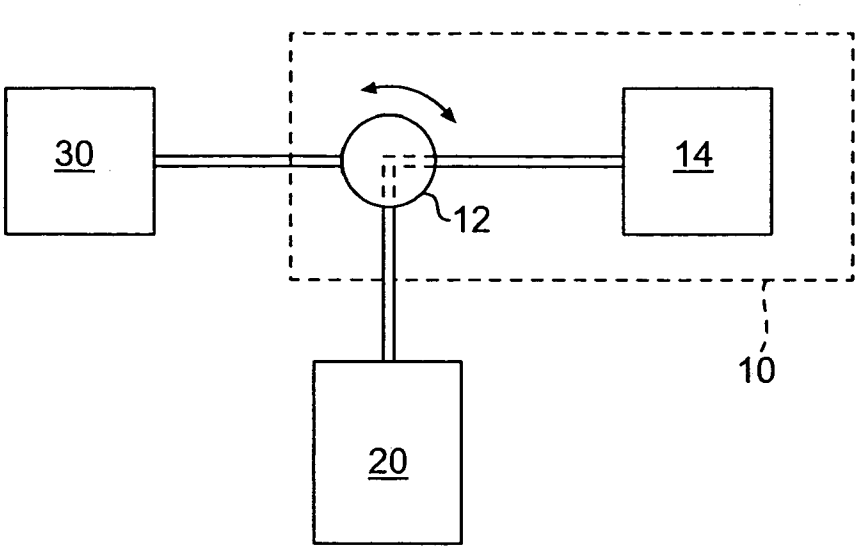



FIG. 1

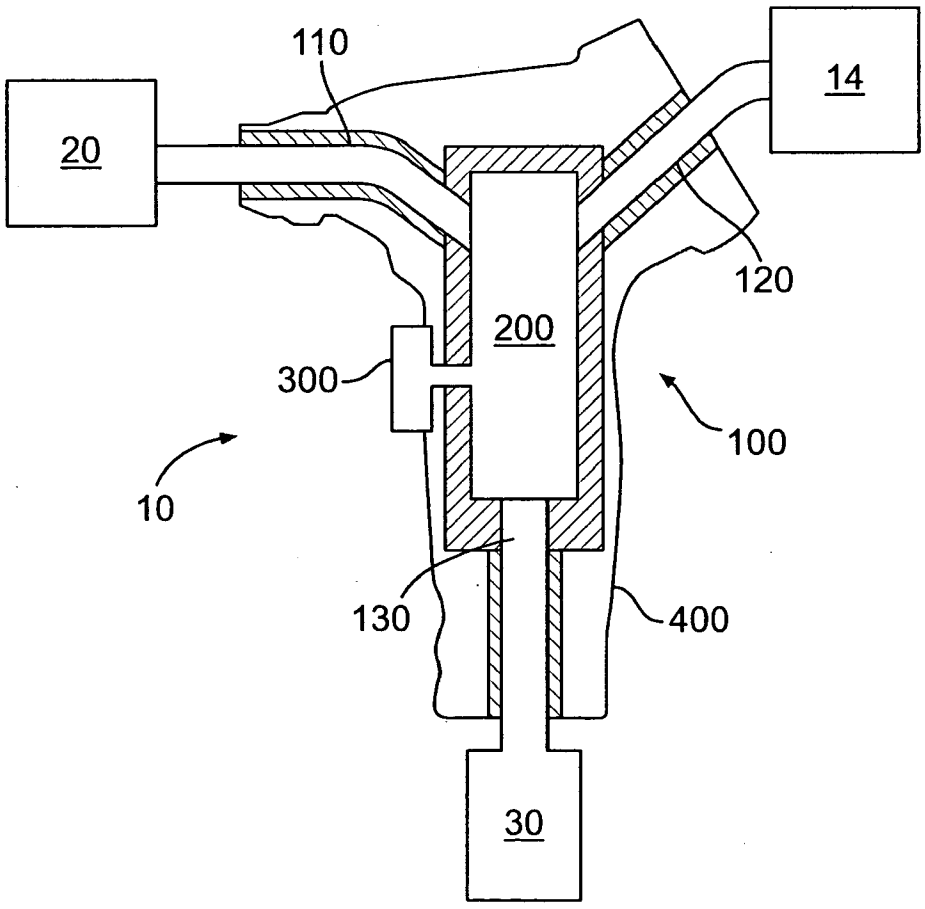



FIG. 2

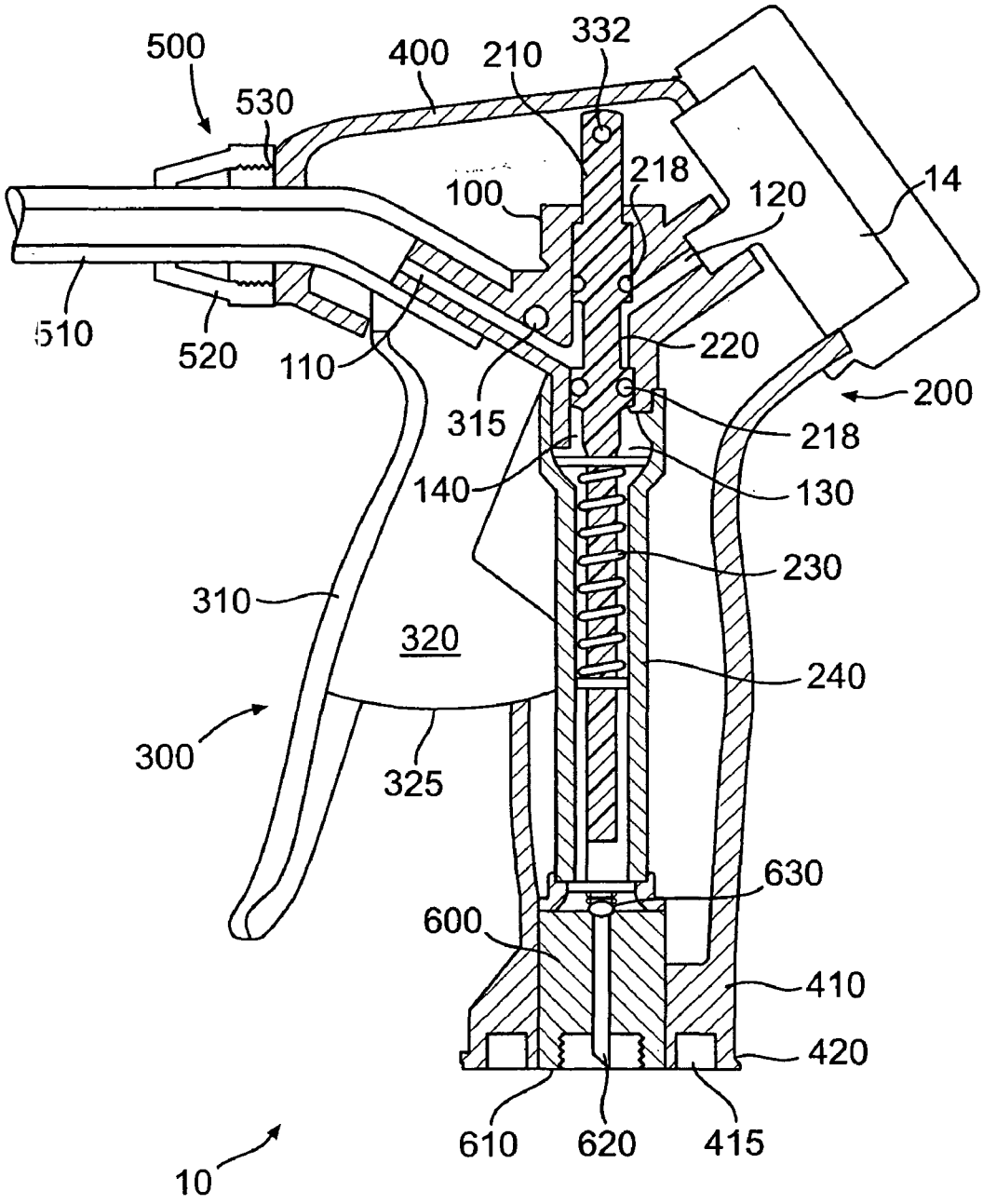

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FIG. 3A

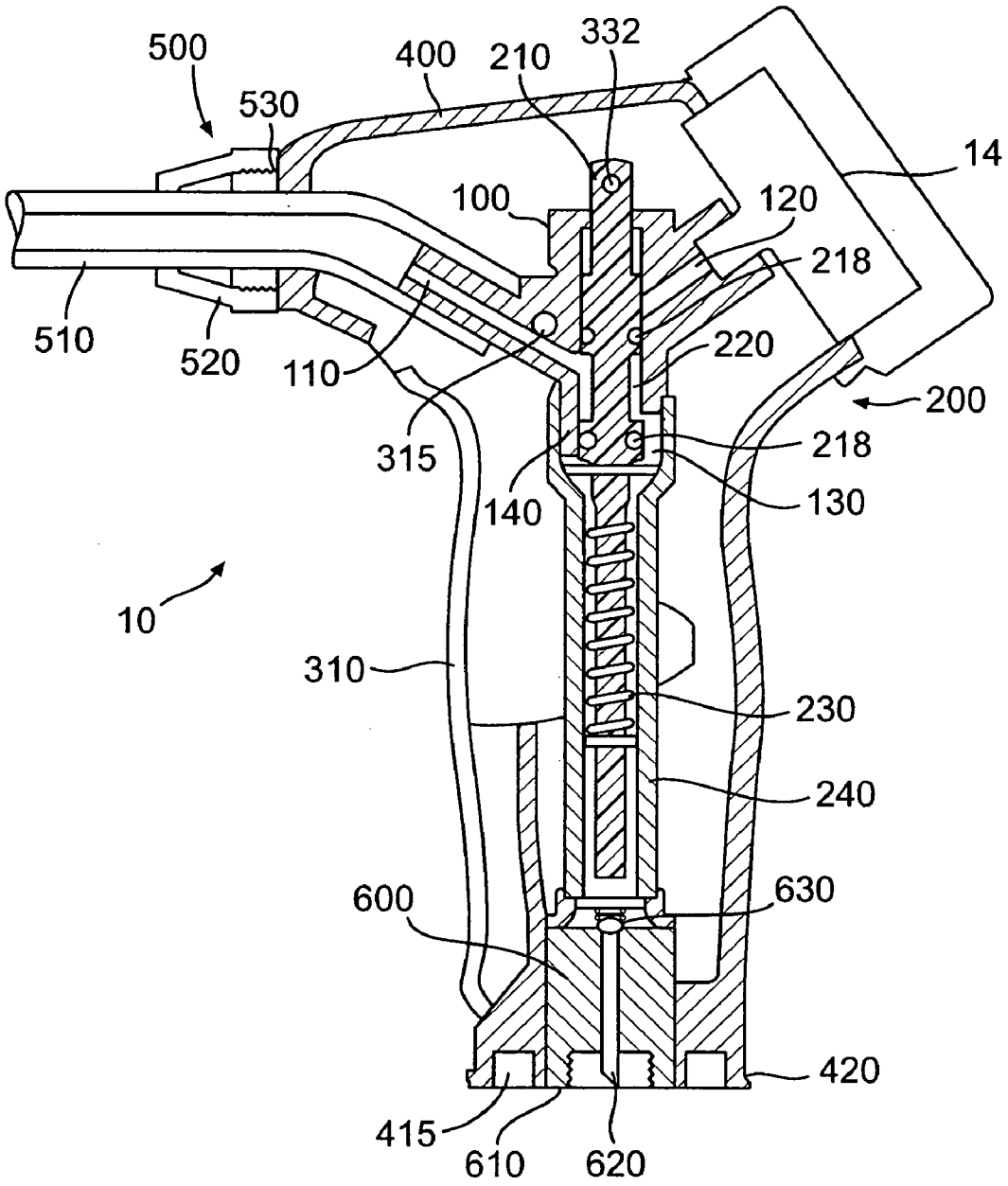
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FIG. 3B

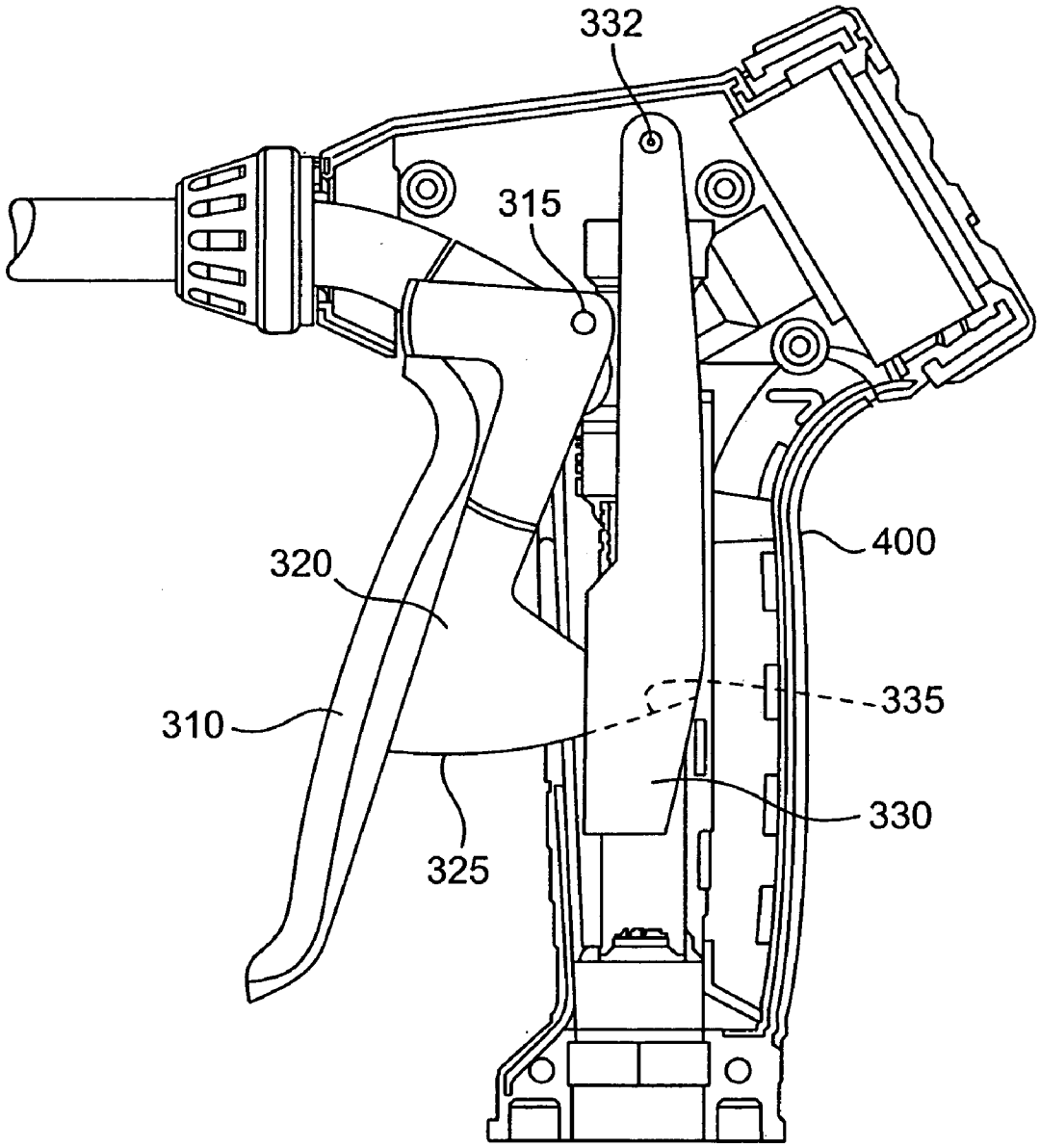


FIG. 3C

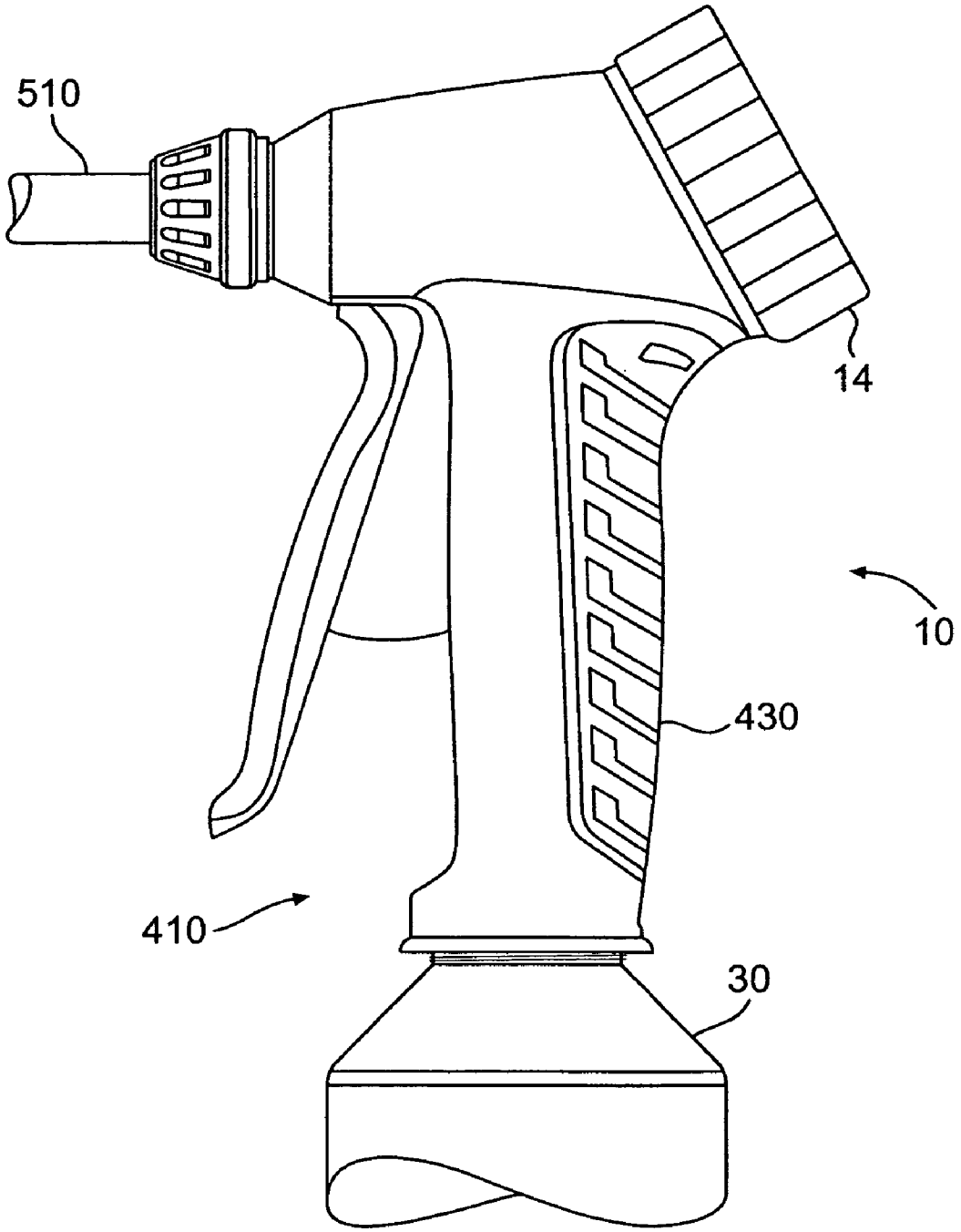


FIG. 4A

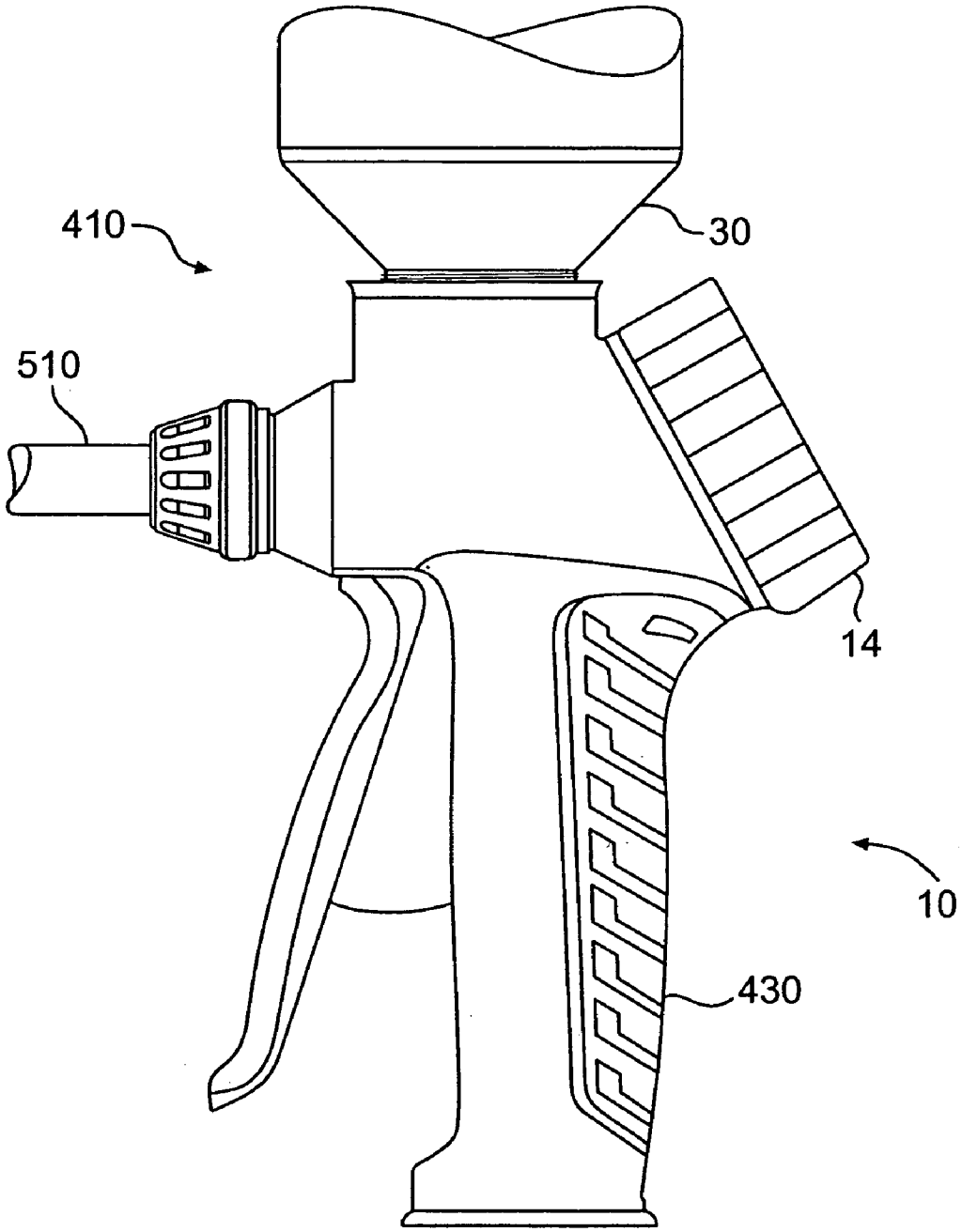


FIG. 4B

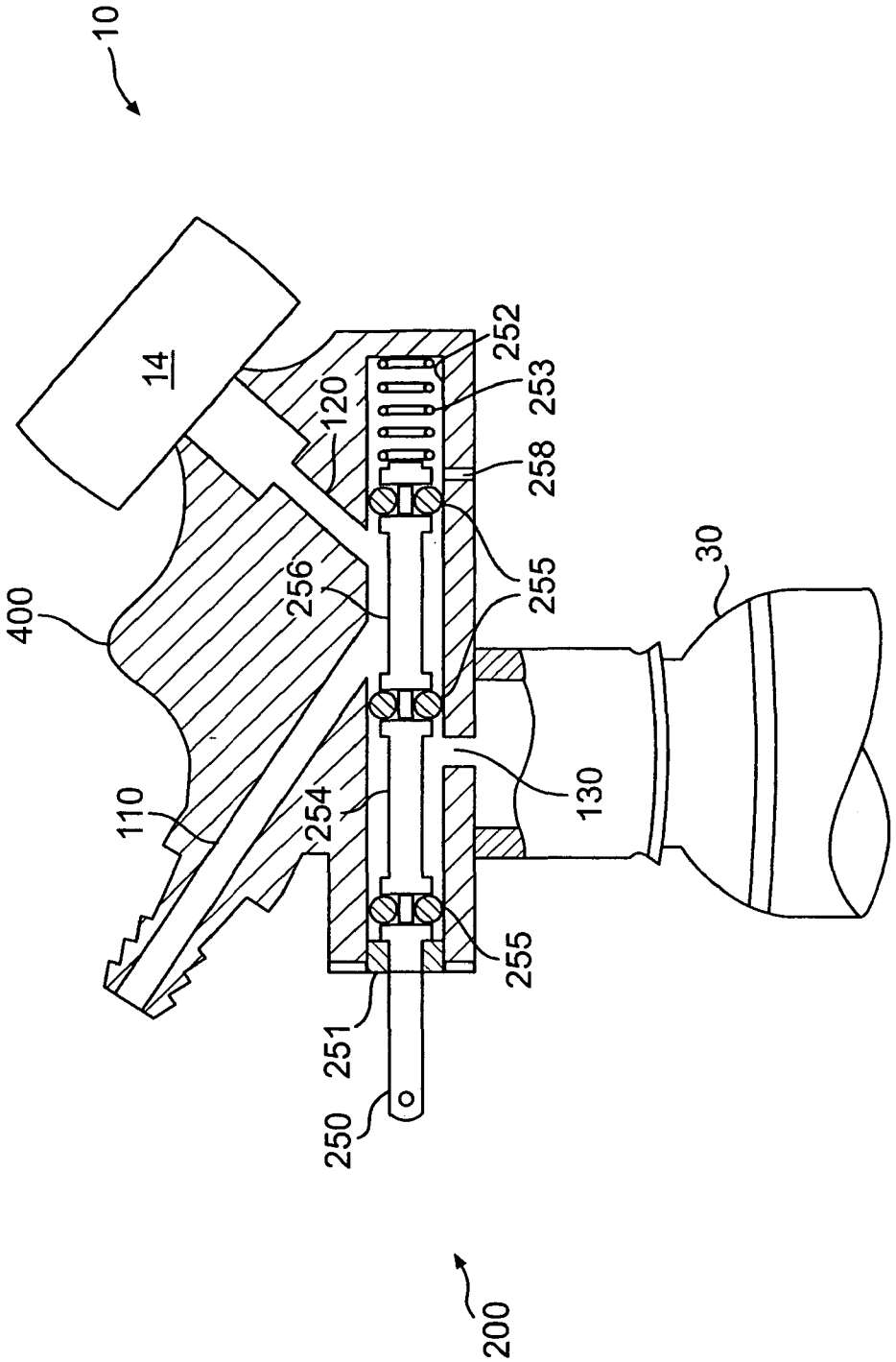


FIG. 5

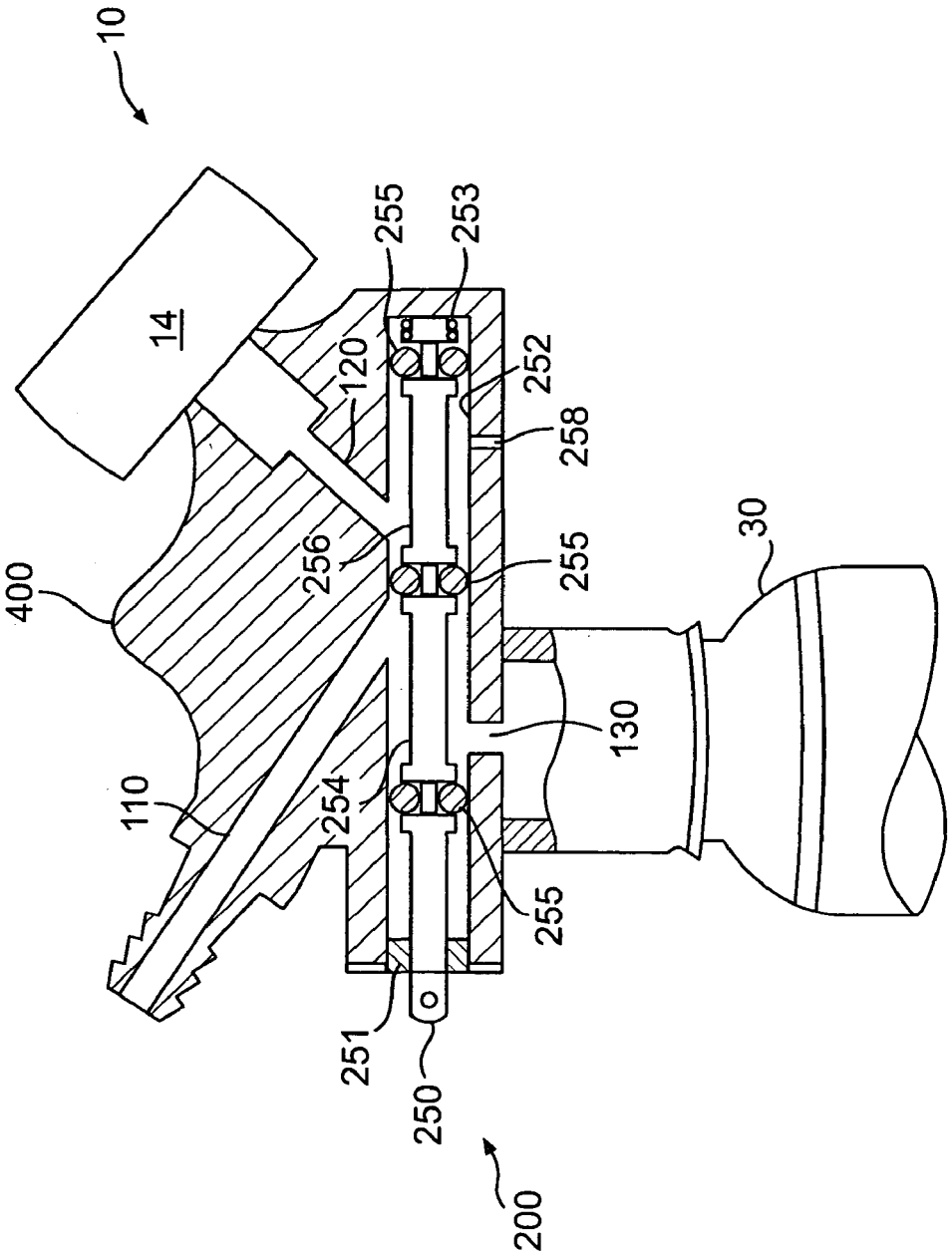
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FIG. 6

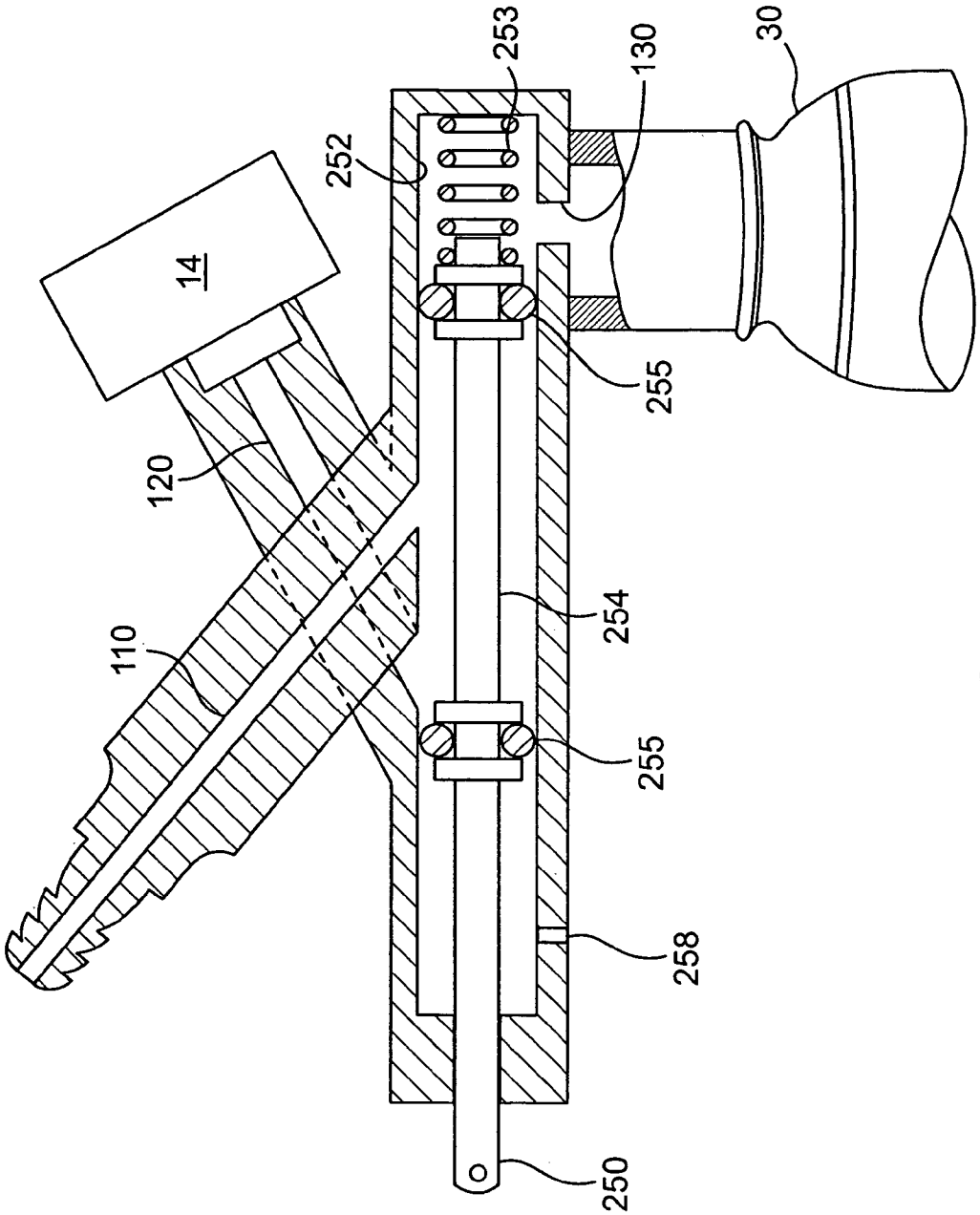


FIG. 7A

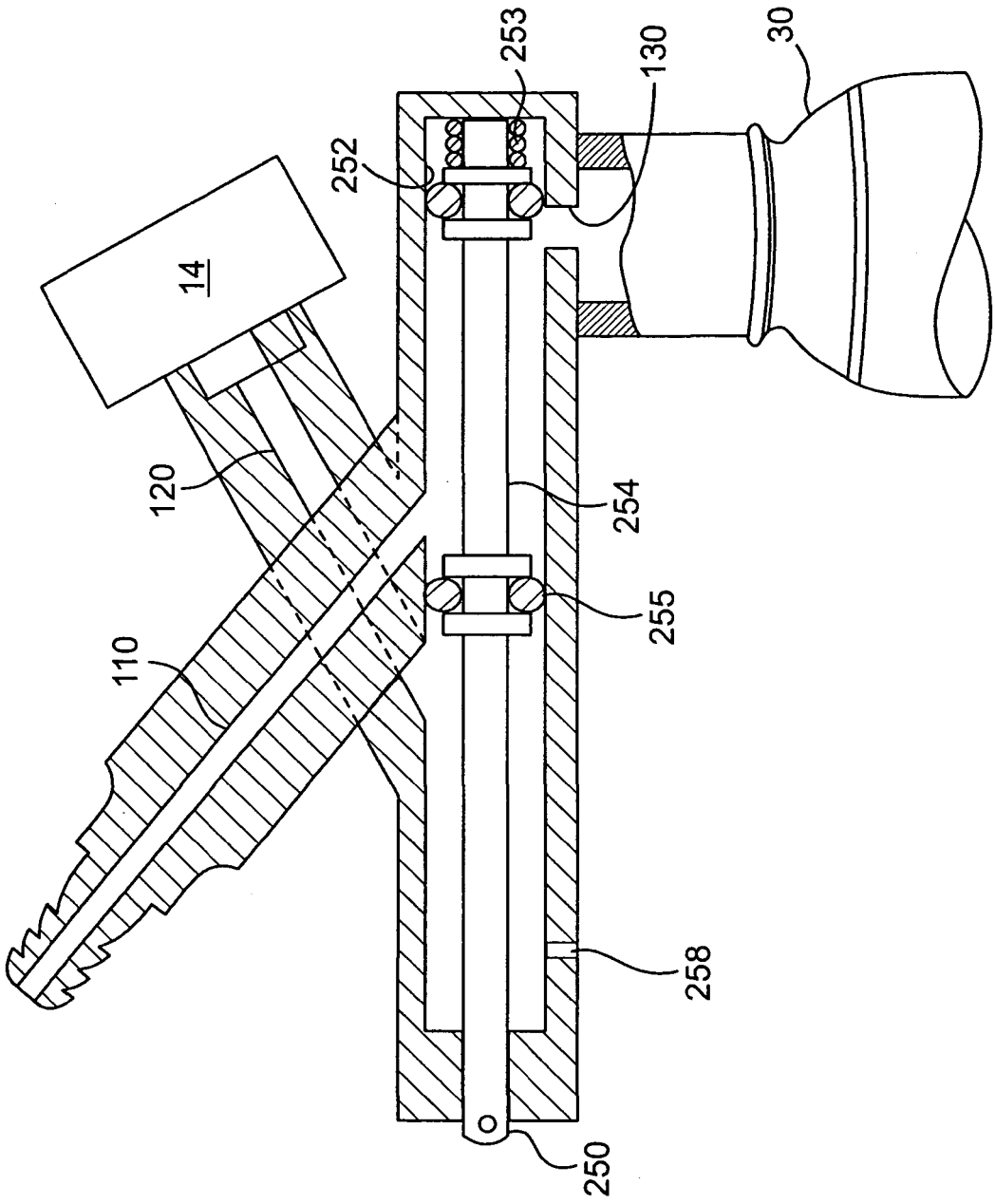


FIG. 7B

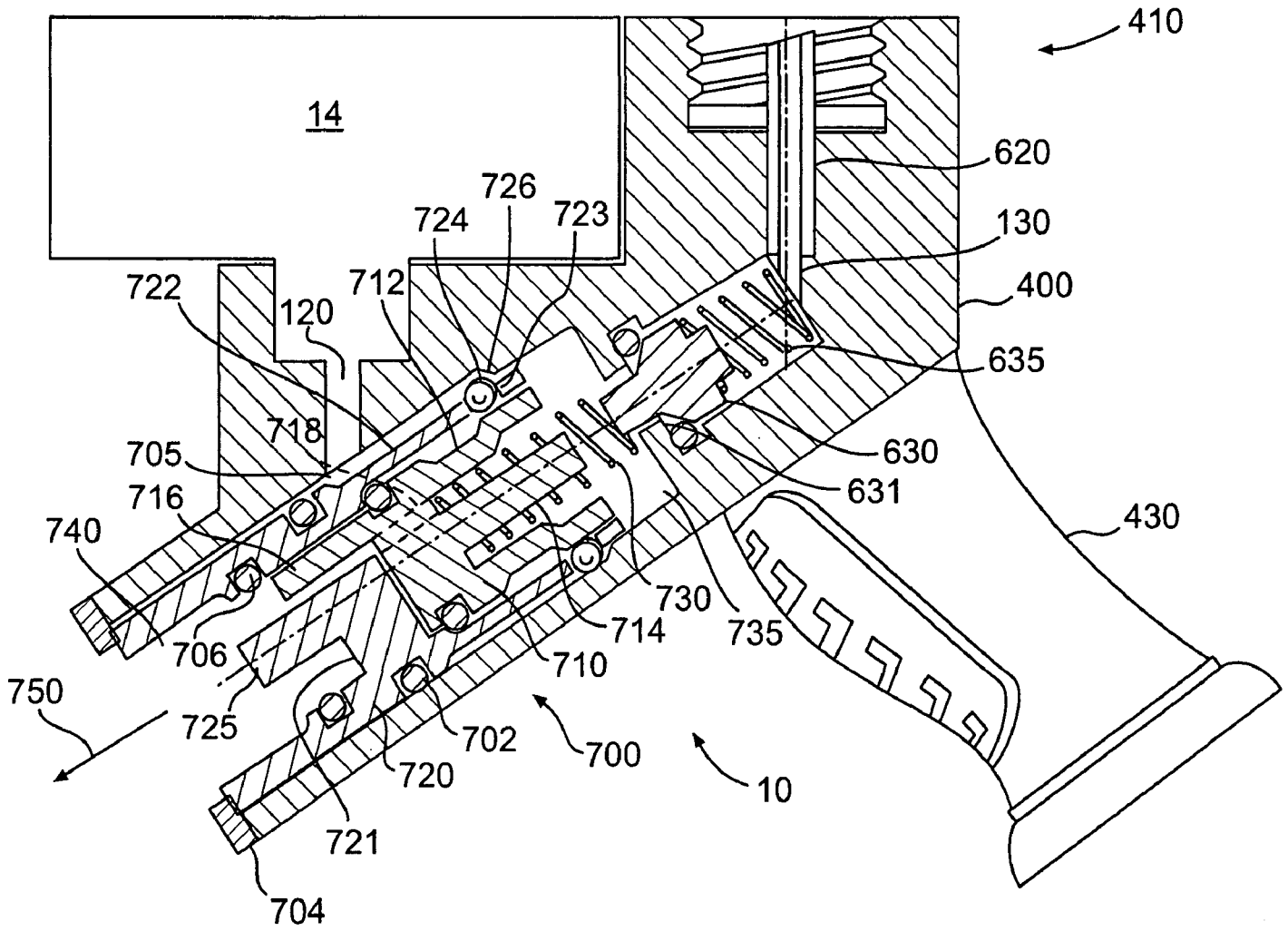
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FIG. 8

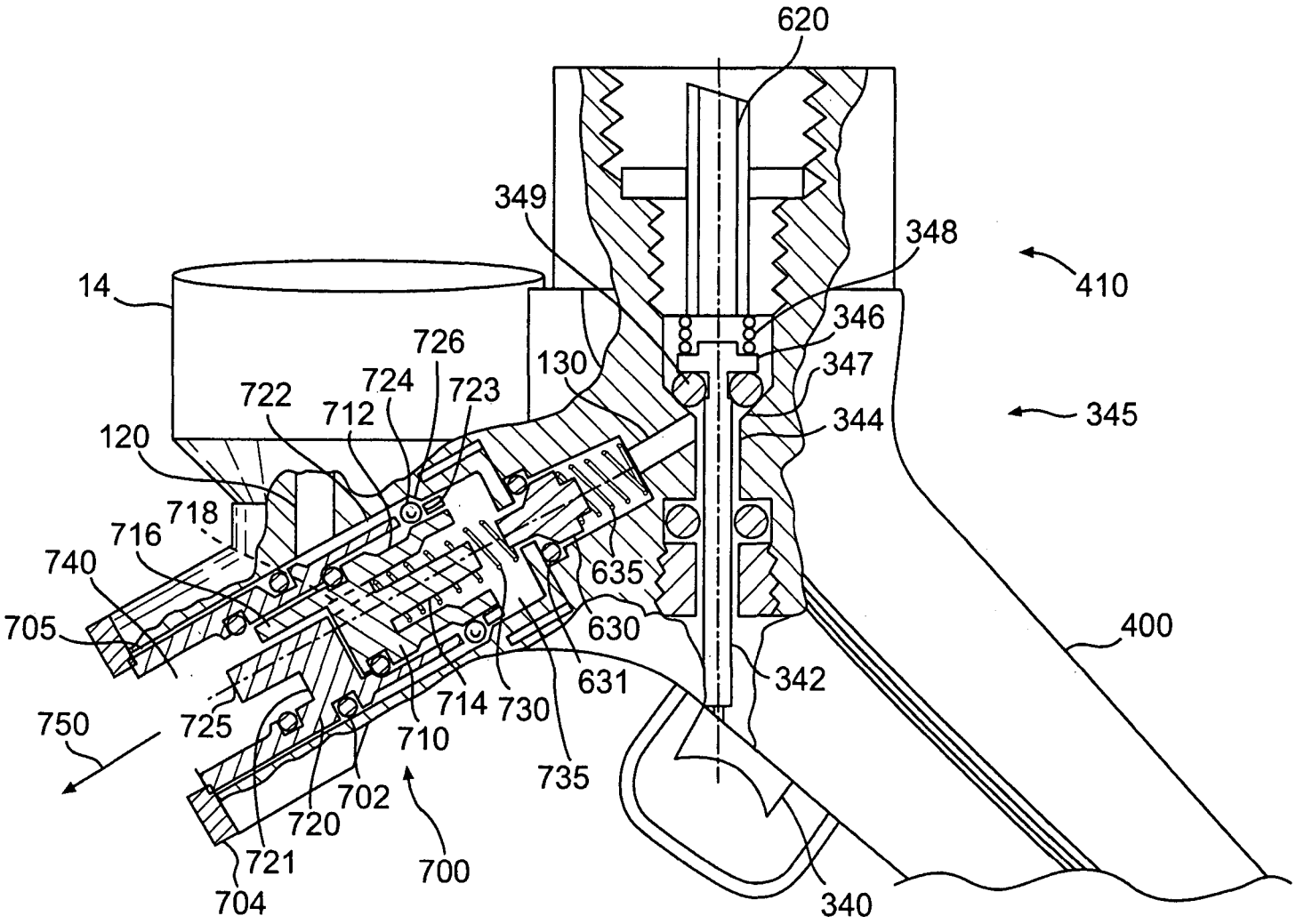
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FIG. 9

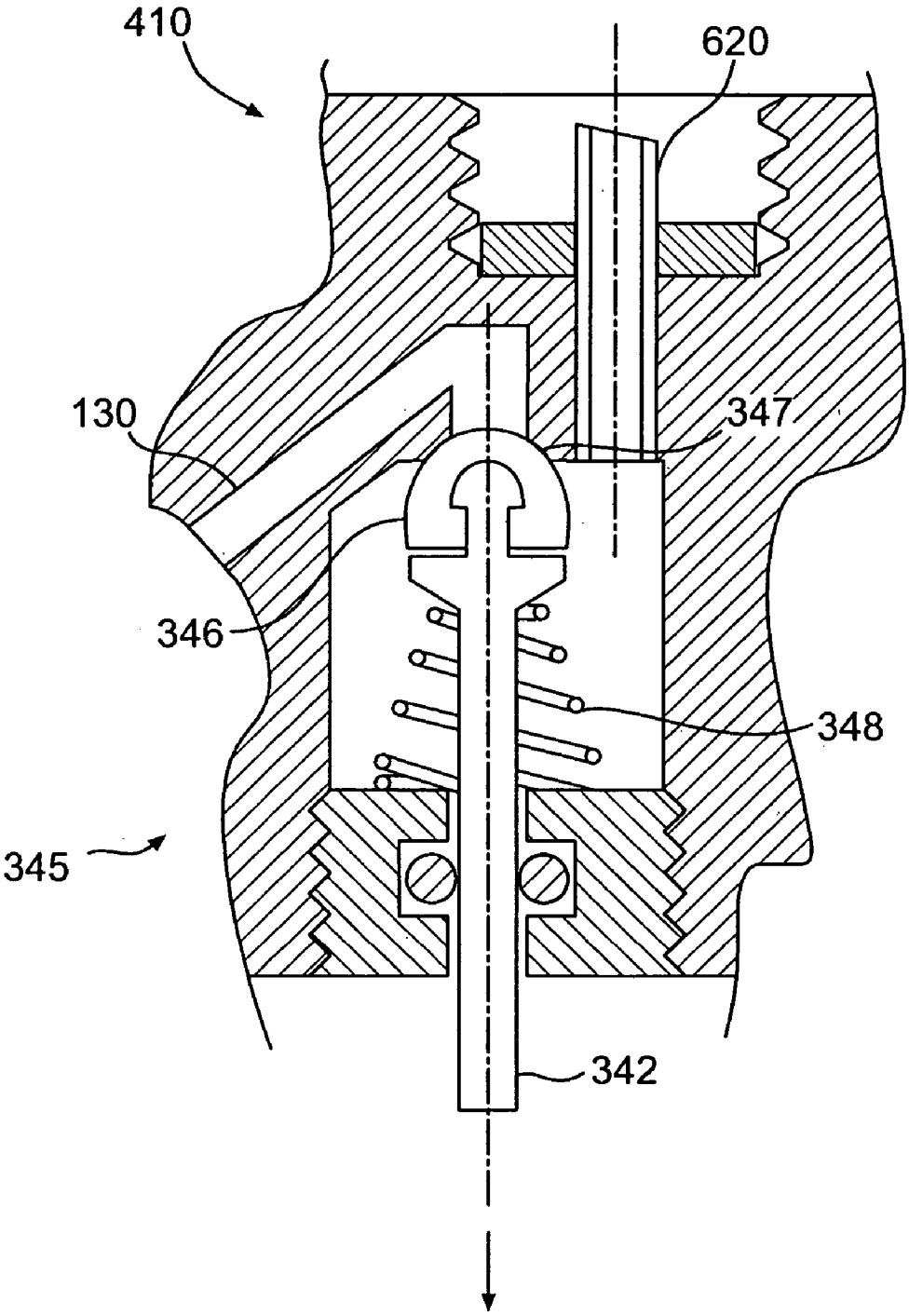


FIG. 10

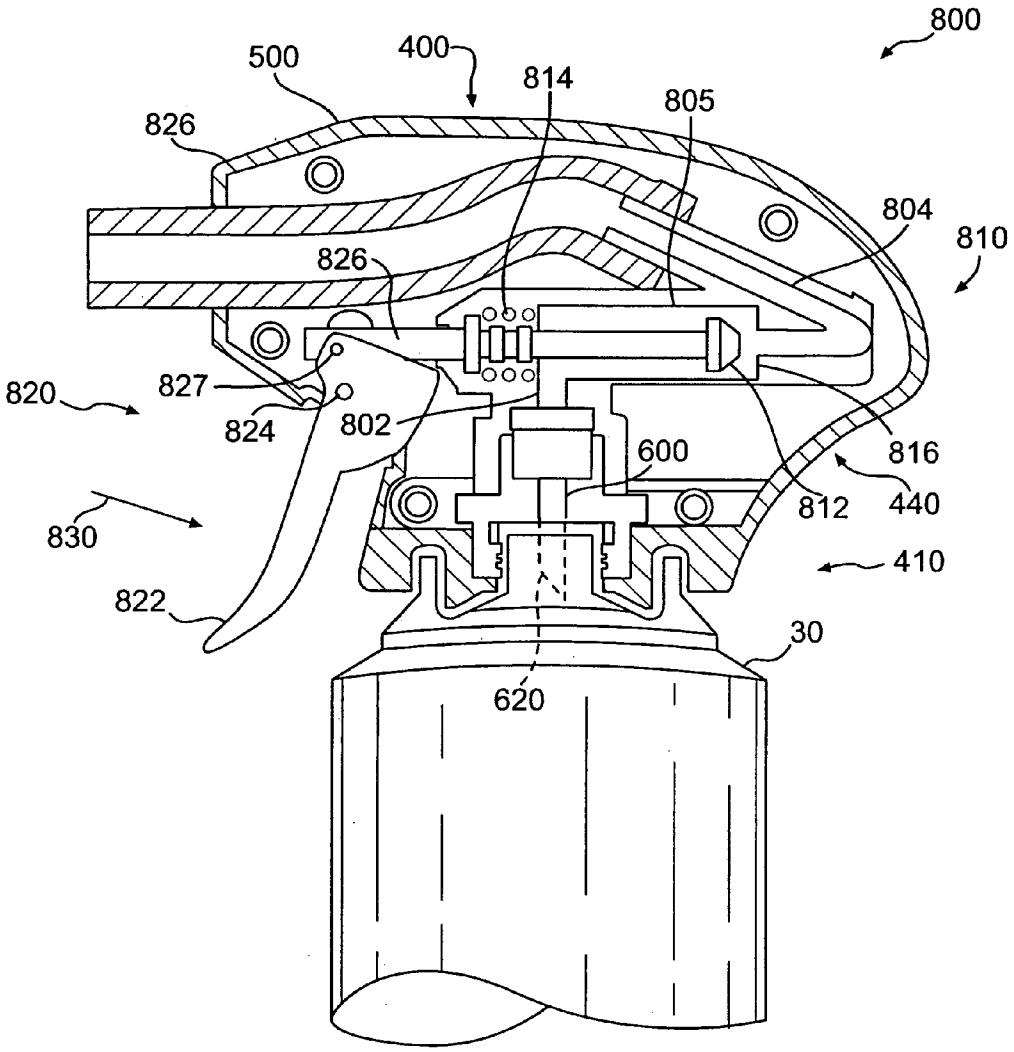
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FIG. 11

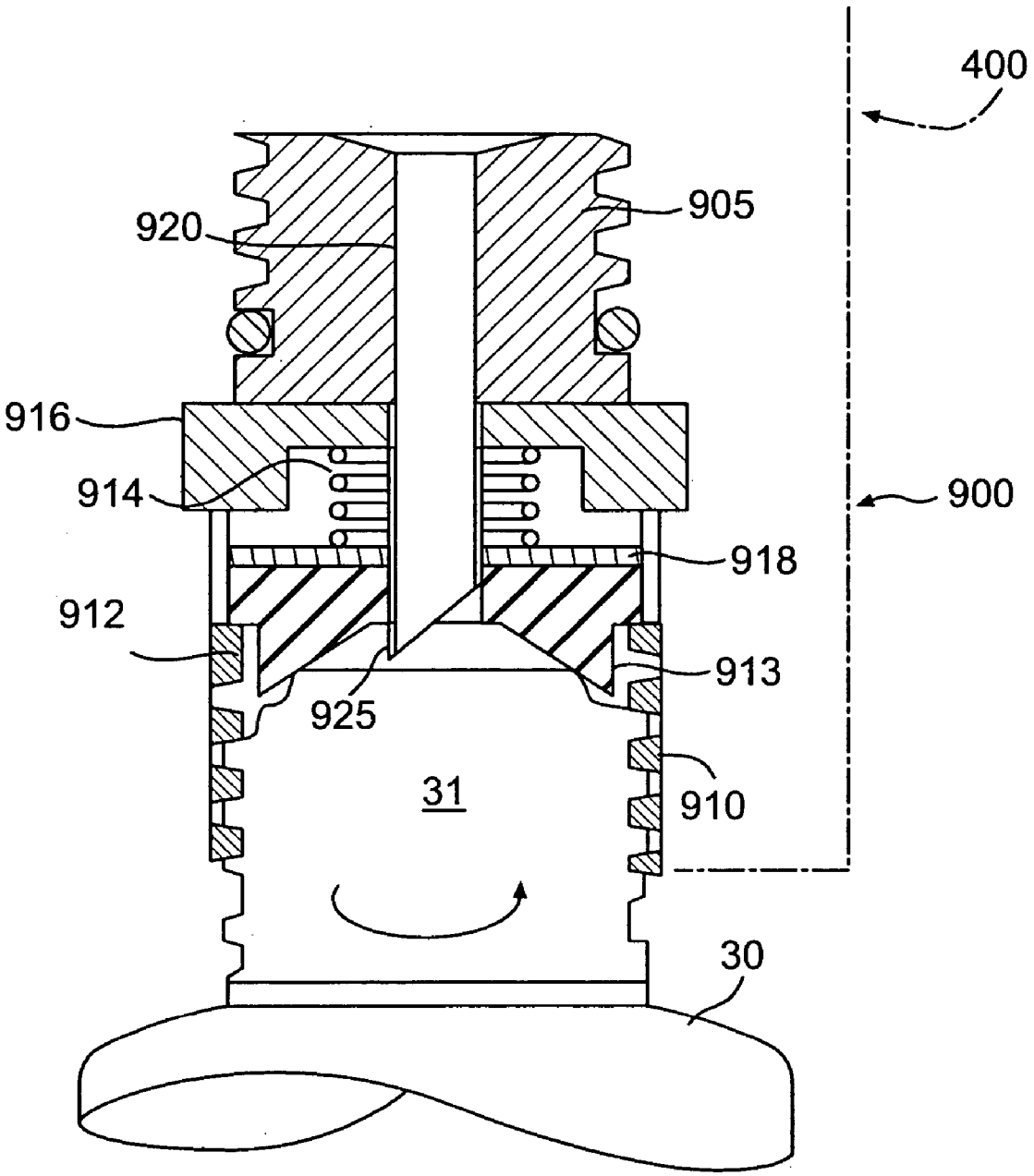


FIG. 12

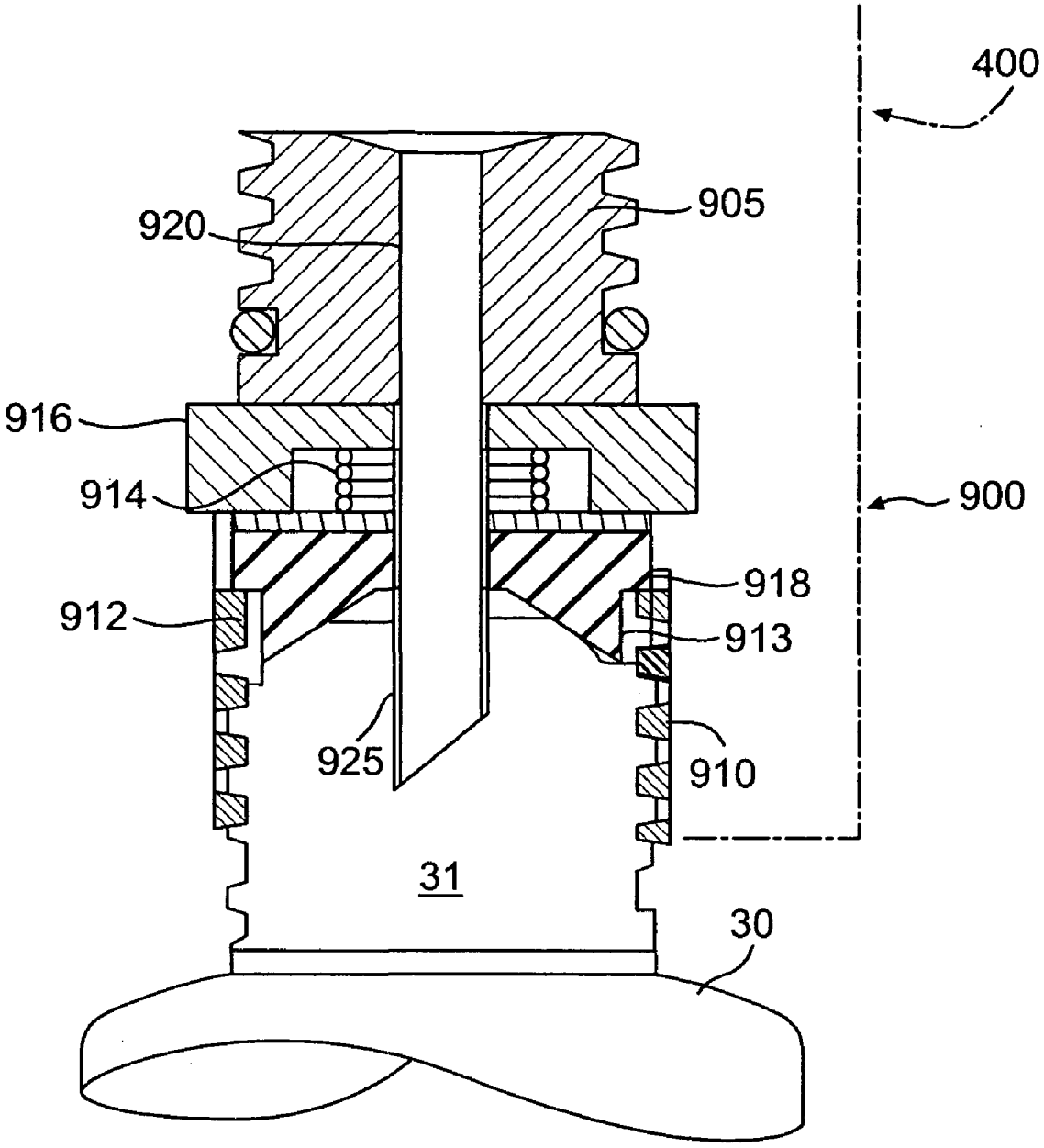


FIG. 13

# APPARATUS AND METHOD FOR SERVICING A COOLANT SYSTEM

## CROSS-REFERENCE TO RELATED PATENT APPLICATIONS

This application claims priority on U.S. Provisional Patent Application Ser. No. 60/516,552, for Device for Measuring Pressure in Automobile Air Conditioner and Charging Same With Refrigerant, filed on Oct. 31, 2003, the entirety of which is incorporated herein by reference.

## FIELD OF THE INVENTION

Embodiments of the present invention relate to an apparatus and method for servicing a coolant system.

## BACKGROUND OF THE INVENTION

Many coolant systems, such as, automobile air conditioners, use chemicals called refrigerants to cool air. The refrigerants may be added to the coolant system as liquids, but utilized in the system as gases. These coolant systems operate based on the principle of Gay-Lussac's Law, which is:

$P/T=P'/T'$ where $V$ is constant

and where P=pressure, T=temperature, and V=volume. In accordance with this law, as the pressure of a compressed gas increases, its temperature increases. Conversely, as the pressure of the gas decreases, the temperature of the gas decreases. Expansion of a refrigerant gas in a coolant system acts to cool the system containing the refrigerant. Air blown over the cooled system, in turn may be cooled, and provided to a vent where it can cool an interior space, such as an automobile cabin. This is the basic concept of many refrigeration and air conditioning systems.

The ability to achieve cooling by compressing and expanding a gaseous refrigerant may depend to some degree on the level of liquid refrigerant present in the system. In an automobile air conditioning system, several factors may adversely affect the level of refrigerant in the system. For example, the system may be subject to significant swings in temperature and frequent thermal cycling due to the action of the air conditioner itself and the heat produced by the automobile's engine. Under these conditions, joints and fittings may tend to expand and contract, permitting refrigerant to slowly leak out of the system. In another example, the hoses used may be slightly permeable to the refrigerant, which may also permit the refrigerant to slowly leak out of the hoses. Accordingly, maintenance of an automobile air conditioning system may require monitoring the refrigerant level or pressure and periodic re-charging of the refrigerant as indicated.

Typical automotive air conditioners are provided with at least one service port to allow for the addition of refrigerant and checking on the level of refrigerant in the system. The check of refrigerant level and the addition of refrigerant may be attended to by a professional mechanic, however, there is no requirement that a professional carry out these functions. A growing number of automobile owners choose to perform this type of routine maintenance on their vehicles. This market is commonly referred to as the "do-it-yourself" market.

A standard tool used by professionals for servicing automobile air conditioners includes a set of manifold gauges.



This device usually includes three hoses and two gauges: one hose connects to a low pressure service port; one hose connects to a high pressure service port; and the third hose connects to the source of refrigerant. The two gauges may be used to measure the pressure at the high and low pressure service ports.

Although manifold gauges are the standard tool used by professional auto mechanics for air conditioner service, several disadvantages may reduce their popularity among do-it-yourself consumers. Manifold gauges can be complicated to use. One must know the approximate ambient temperature and look up the pressure readings of the gauges on a chart to determine if there is sufficient refrigerant in the system. In addition, use of manifold gauges may be dangerous. Because these devices require handling of the high pressure service port of the automobile air conditioner, their use may present a risk of injury to inexperienced consumers. Furthermore, manifold gauges may be relatively expensive for a "do-it yourself" consumer considering the relative infrequency of their use for servicing of a single automobile. Accordingly, there is a need for new methods and apparatus for servicing air conditioners, such as those used in automobiles, which do not have the same drawbacks as manifold gauges.

Various method and apparatus embodiments of the present invention may be used to service air conditioners, such as those used in automobiles. Embodiments of the present invention may allow a consumer to measure the refrigerant pressure in an automobile air conditioner, and to add refrigerant as needed. Additional advantages of embodiments of the invention are set forth, in part, in the description which follows and, in part, will be apparent to one of ordinary skill in the art from the description and/or from the practice of the invention.

## SUMMARY OF THE INVENTION

Responsive to the foregoing challenges, Applicant has developed an innovative apparatus for servicing a coolant system adapted to receive coolant from a coolant supply. The apparatus may comprise: a device for measuring a parameter of the coolant system; and means for selectively switching between providing: (i) communication between the coolant system and said measuring device, and (ii) communication between the coolant system and the coolant supply.

Applicant has further developed a device for servicing a coolant system, comprising: an outer housing; a central body disposed within the outer housing, the central body having an internal bore and first, second, and third fluid ports communicating with the internal bore; a valve disposed in the internal bore, the valve adapted to attain a first position in which there is communication between the first fluid port and the second fluid port, and a second position in which there is communication between the first fluid port and the third fluid port; and a valve actuator operatively connected to the valve.

Applicant has further developed an innovative system for servicing an automobile air conditioner. The system may comprise: a coolant supply source; means for measuring a parameter of the coolant in the automobile air conditioner; and a device for servicing the automobile air conditioner. The servicing device may comprise a central body; a valve disposed in the central body; and a valve actuator, wherein the valve is adapted to provide selective communication between the automobile air conditioner and (i) the measur-

ing means, and (ii) the coolant supply source, responsive to an actuation force from the valve actuator.

Applicant has developed an innovative method for servicing a coolant system using a servicing apparatus attached to a measuring device and a coolant supply. The method may comprise the steps of: attaching the servicing apparatus to the coolant system; and selectively switching between providing: (i) communication between the coolant system and the measuring device, and (ii) communication between the coolant system and the coolant supply. The step of selectively switching may include the step of providing an actuating force to the servicing apparatus for switching between measuring a coolant system parameter and providing coolant to the coolant system.

Applicant has further developed an innovative method of servicing a coolant system using a servicing apparatus attached to a measuring device and a coolant supply, comprising the steps of: attaching the servicing apparatus to the coolant system; and selectively providing a squeezing force to the servicing apparatus for switching between measuring a coolant system parameter and providing coolant to the coolant system.

It is to be understood that both the foregoing general description and the following detailed description are exemplary and explanatory only, and are not restrictive of the invention as claimed.

## BRIEF DESCRIPTION OF THE DRAWINGS

In order to assist the understanding of this invention, reference will now be made to the appended drawings, in which like reference characters refer to like elements.

FIG. **1** is a block diagram of a system for servicing a coolant system according to an embodiment of the present invention.

FIG. **2** is a schematic diagram of a coolant system servicing device according to an embodiment of the present invention.

FIG. **3**A is a sectional view of a coolant system servicing device in a measuring mode of operation according to an embodiment of the present invention.

FIG. **3**B is a sectional view of a coolant system servicing device in a charging mode of operation according to an embodiment of the present invention.

FIG. **3**C is a side cross-sectional view of a coolant system servicing device in a measuring mode of operation according to an embodiment of the present invention.

FIGS. **4**A and **4**B are side pictorial views of a coolant system servicing device attached to a pressurized container of coolant according to various embodiments of the present invention.

FIG. **5** is a partial cross-sectional view of a coolant system servicing device in a measuring mode of operation according to a first alternative embodiment of the present invention.

FIG. **6** is a partial cross-sectional view of the coolant system servicing device shown in FIG. **5** in a charging mode of operation.

FIG. **7**A is a partial cross-sectional view of a coolant system servicing device in a measuring mode of operation according to a second alternative embodiment of the present invention.

FIG. **7**B is a partial cross-sectional view of the coolant system servicing device shown in FIG. **7***a* in a charging mode of operation.



FIG. **8** is a partial cross-sectional view of a coolant system servicing device according to a third alternative embodiment of the present invention.

FIG. **9** is a partial cross-sectional view of a coolant system servicing device according to a fourth alternative embodiment of the present invention.

FIG. **10** is a partial cross-sectional view of an alternative trigger arrangement that may be used in accordance with the coolant system servicing device shown in FIG. **9**.

FIG. **11** is a partial cross-sectional view of a coolant system servicing device having a low packaging profile according to an embodiment of the present invention.

FIG. **12** is a partial cross-sectional view of an adapter for connecting a coolant system servicing device to a coolant supply in a sealing mode of operation.

FIG. **13** is a partial cross-sectional view of the adapter shown in FIG. **12** in a piercing mode of operation.

## DETAILED DESCRIPTION OF EMBODIMENTS OF THE INVENTION

Reference will now be made in detail to embodiments of the present invention, examples of which are illustrated in the accompanying drawings. In a first embodiment, with reference to FIG. **1**, a device **10** for servicing a coolant system **20**, and a coolant supply **30** are shown. The servicing device **10** may include a measurement device **14** and a switching device **12** for selectively providing communication between the coolant system **20**, the coolant supply **30**, and the measurement device **14**. The servicing device **10** may be adapted to selectively switch between a charging mode of operation, in which coolant from the coolant supply **30** is provided to the coolant system **20**, and a measuring mode of operation, in which a parameter of the coolant system **20** is measured by the measurement device **14**. The depiction of the switching device **12** is intended to be illustrative only, and not limiting. Any means for providing the indicated switching may be used in alternative embodiments of the invention.

The servicing device **10** may be used to determine the level of coolant in the coolant system **20**, and/or add coolant to the coolant system **20** from the coolant supply **30**. In one method embodiment of the present invention, use of the servicing device **10** may be initiated by connecting the servicing device **10** to the coolant system **20** and the coolant supply **30**. The switching device **12** may be oriented at this time to provide communication between the measurement device **14** and the coolant system **20**. In this configuration, the measurement device **14** displays one or more parameters of the coolant system **20**. In one embodiment, the measurement device **14** indicates a pressure level of the coolant system **20**. The user may then read the pressure of the coolant system **20**, for example, to determine whether or not additional coolant should be added to the system. If the addition of coolant is needed, the user may change the orientation of the switching device **12** so that it provides communication between the coolant system **20** and the coolant supply **30**. When the switching device **12** is oriented so, coolant may be provided from the coolant supply **30** to the coolant system **20**. In this orientation, communication between coolant system **20** and the measurement device **14** may be substantially prevented. The user may change the orientation of the switching device **12** as desired to alternate between providing coolant to the coolant system and checking the pressure of the coolant system.

In one embodiment of the present invention, shown in FIG. **2**, the servicing device **10** may include a central body

100, a valve 200, a valve actuator 300, and a housing 400. The central body 100 may include or communicate with a first fluid port 110, a second fluid port 120, and a third fluid port 130. The valve 200 may be adapted to provide selective communication between (i) the first fluid port 110 and the second fluid port 120, and (ii) the first fluid port 110 and the third fluid port 130, in response to an actuation of the valve actuator 300. The valve 200 shown in FIG. 2 may carry out the function of the switching device 12 shown in FIG. 1. The first port 110 may be adapted to connect to the coolant system 20, the second port 120 may be connected to the measurement device 14, and the third port 130 may be adapted to connect to the coolant supply 30. In one embodiment, the measurement device 14 may be incorporated into the housing 400 (as shown in FIG. 3A, for example). With continued reference to FIG. 2, the servicing device 10 may be used to determine the level of coolant in the coolant system 20, and/or add coolant to the coolant system from the coolant supply 30 in the same manner as explained above in connection with the embodiment of the invention shown in FIG. 1.

In the embodiments of the present invention shown in FIGS. 1 and 2, the measurement device 14 is described as preferably being a pressure gauge used to measure the pressure of the coolant in the coolant system 20. It is contemplated that the measurement device 14 may be adapted to measure other suitable parameters of the coolant system 20.

In various embodiments of the present invention, the coolant supply 30 may comprise a pressurized container including at least a refrigerant, as shown in FIGS. 4A and 4B. The container may comprise an Acme threaded container or other suitable container type. The refrigerant may comprise R134a, R12 (i.e., Freon), and/or other suitable coolant system refrigerant. In alternative embodiments of the invention, the coolant supply 30 may further include other suitable chemicals, such as, for example, leak detector and/or system lubricant.

The orientation of the coolant system 20, the coolant supply 30, and the measurement device 14 relative to the servicing device 10, shown in FIG. 2, is intended to be illustrative only, and not limiting. For example, with reference to FIGS. 4A and 4B, it is contemplated that the receiving end 410 of the housing 400 for the coolant supply 30 may be located at either the top or the bottom of the servicing device 10. Other orientations of the coolant system 20, the coolant supply source 30, and the measurement device 14 relative to the servicing device 10 are also considered possible and are within the scope of the present invention.

Another embodiment of the present invention will now be described with reference to FIGS. 3A, 3B, and 3C, in which like reference numerals refer to like elements in other embodiments, and which illustrate the same servicing device 10 in a measuring mode of operation (FIG. 3A), and a charging mode of operation (FIG. 3B), respectively. With respect to FIGS. 3A and 3B, the servicing device 10 may include a central body 100, a valve 200, a valve actuator 300, and a housing 400. The central body 100 may include or communicate with a first fluid port 110, a second fluid port 120, and a third fluid port 130. The valve 200 may be adapted to provide selective communication between (i) the first port 110 and the second port 120, and (ii) the first port 110 and the third port 130, in response to an actuation of the valve actuator 300. The first port 110 may be adapted to connect to a coolant system (not shown), the second port 120 may be connected to a measurement device 14, and the third port 130 may be adapted to connect to a coolant supply (not shown).

The valve 200 may include a plunger 210 slidably disposed in a valve bore 140 formed in the central body 100. The valve bore 140 may be in selective fluid communication with the first port 110, the second port 120, and the third port 130 depending upon the position of the plunger 210. The plunger 210 may include an annular recess 220 provided between first and second grooves. Each of the grooves may be adapted to receive a sealing ring 218. The plunger 210 may be biased within the bore 140 in an upward direction by a spring 230. A tube 240 may extend from the third port 130 of the central body 100.

The servicing device 10 may further comprise a receiving end 410 adapted to secure the device to a pressurized container of the coolant supply (not shown). The receiving end 410 of the housing 400 may include a recess 415 provided in an outer flange 420. The recess 415 and the outer flange 420 may be adapted to receive the hub of the coolant supply container (not shown) and support the servicing device 10 on the container. A pictorial view of the servicing device 10 of FIGS. 3A-C while mounted on a coolant supply container 30 is shown in FIG. 4A. In an alternative embodiment shown in FIG. 4B, the coolant supply container 30 may be mounted on the servicing device 10 in a location closer to the measurement device 14.

An adapter 600 for connecting the servicing device 10 to the coolant supply may be disposed in the housing 400 at receiving end 410. The adapter 600 may include a threaded bore 610 for engaging a threaded nozzle of the coolant supply. A piercing member 620 may be disposed in the adapter 600. The piercing member 620 may include a sharp distal end such that when the adapter 600 engages the coolant supply container, the piercing member 620 pierces the seal of the container. The piercing member 620 is preferably hollow so as to allow the contents of the coolant supply container to exit from the container into the service device 10. In one embodiment, the piercing member 620 comprises a fixed needle.

A check valve 630 may be disposed near or in a lower portion of the tube 240 proximate to the adapter 600. The check valve 630 may be adapted to permit primarily one-way fluid communication between the coolant supply container and the servicing device 10. In this manner, the check valve 630 may prevent undesired flow of coolant from the coolant system and the servicing device 10 back into the coolant supply container 30.

The servicing device 10 may further comprise a valve actuator 300 for selectively applying an actuating force to the valve 200. In one embodiment, the valve actuator 300 may be adapted to receive a squeezing or gripping force.

With reference to FIGS. 3A, 3B, and 3C, the valve actuator 300 may include a handle 310 pivotally attached to the central body 100 by a pin 315. The handle 310 may include a blade portion 320 having a cam edge 325. Detail of the manner in which the blade portion 320 and the cam edge 325 may be used to actuate the valve 200 may be explained in connection with FIG. 3C. With reference to FIG. 3C in particular, the valve actuator 300 may include single or dual arms 330 which may be attached to the plunger 210 (see FIG. 3A) by a pin 332. The arm(s) 330 may extend between the top of the plunger 210 and the cam edge 325. The arm(s) 330 may include a cam engaging surface 335 designed to smoothly and gradually receive the cam edge 325 of the blade 320. When the handle 310 is squeezed (moved towards the housing 400 in the embodiment shown

in FIG. **3**C), the cam edge **325** may force the arm(s) **320** downward, overcoming the upward bias of the valve spring **230**, and moving the plunger **210** from a first measuring position in the bore **140** (shown in FIG. **3**A) to a second charging position (shown in FIG. **3**B). Release of the handle **310** may allow the plunger **210** to return to its measuring position under the influence of the spring **230**. In some embodiments of the present invention, the valve actuator **300** may be adapted for one-handed operation. In some embodiments, the valve actuator **300** may be adapted such that switching the servicing device **10** between a measuring mode of operation and a charging mode of operation may occur without a user having to let go of the device.

It is contemplated that other suitable means for providing an actuating force to the valve **200** are considered to be within the scope of the present invention. For example, means other than the arm(s) **330** for actuating the plunger **210** with the handle **310** are considered within the scope of the present invention, including, but not limited to, hydraulic, mechanical, or pneumatic members that could be used to link the plunger **210** with the handle **310**. In addition, the valve actuator **300** may be adapted to receive other actuation forces, such as, for example, pulling, rotating, and/or pushing forces.

The servicing device **10** may further comprise means for connecting the device to a coolant system (not shown). With renewed reference to FIGS. **3**A and **3**B, the device **10** may include a hose assembly **500**. The hose assembly **500** may include a hose **510** having a first end attached to the central body **100** in communication with the first port **110**. The hose **510** may be secured to the housing **400** with a nut **520**. In one embodiment, the nut **520** may engage a corresponding connector **530** associated with the housing **400**. A second end of the hose (not shown) may be provided with a coupler adapted to connect to the coolant system **20**. In one embodiment of the present invention, the coupler may comprise a quick-connect coupler adapted to connect to a low pressure service port of an automobile air conditioner.

Operation of an embodiment of the invention shown in FIGS. **3**A-C will now be described. The servicing device **10** may be connected to a coolant supply at the receiving end **410** and to an automobile coolant system by the hose **510**. At this time the handle **310** may remain in its extended position, as shown in FIG. **3**A. Connection of the servicing device **10** to the coolant supply causes the piercing member **620** to pierce a seal on the top of the coolant supply. As a result, pressurized coolant may pass through the piercing member **620**, the check valve **630**, and the tube **240**. While the servicing device **10** is in the position shown in FIG. **3**A, the refrigerant may not be able to flow past the plunger **210** in the central body **100**, and as a result the flow of refrigerant does not extend past the third port **130**.

While the servicing device **10** is in the position shown in FIG. **3**A, the device may be used to measure the pressure of the refrigerant in the coolant system. While in this position, the plunger **210** is biased into its upper position by the spring **230**. The annular recess **220** of the plunger **210** may provide communication between the first port **110** (which is connected to the coolant system) and the second port **120** (which is connected to the measurement device **14**). The sealing rings **218** may substantially prevent communication between the third port **130** and either of the first or second ports **110** and **120**. As a result, the second port **120** experiences pressure similar to the pressure of the first port **110**, which, in turn, is similar to the internal pressure of the coolant system. In this manner, the measurement device **14** may measure the coolant system pressure (or other parameter in alternative embodiments).

The user may inspect the measurement device **14** and determine if additional coolant is required. In some embodiments, the measurement device **14** may indicate the need for additional coolant, for example, by displaying a measurement reading. If a need for additional coolant is determined, the user may use the servicing device **10** to charge the coolant system with more coolant from the coolant supply. When charging operation is desired, an actuation force may be applied to the valve **200** using the handle **310**. As shown in FIGS. **3**B and **3**C, when the handle **310** is squeezed, the cam edge **325** may push down on the cam surface **335**, causing the arm(s) **330** to move downward. The downward motion of the arm(s) **330** may in turn cause the plunger **210** to move downward within the bore **140**. In this position, the sealing rings **218** may substantially prevent communication between the second port **120** and either of the first or third ports **110** and **130**. At the same time, the sealing rings **218** allow communication between the first and third ports **110** and **130**. As a result, coolant from the coolant supply may flow through the piercing member **620**, the tube **240**, and past first port **110** to the coolant system. The user may apply an actuation force to the valve **200** by squeezing the handle **310** as desired to alternate between providing coolant to the coolant system and measuring a parameter of the coolant system.

It is appreciated that the servicing device **10** may be adapted to selectively switch between the charging mode of operation and the measuring mode of operation in alternative ways. For example, it is contemplated that the device **10** may be adapted such that an actuation force is applied for measuring operation, and no actuation force is applied to the valve **200** for charging operation.

Another embodiment of the present invention will now be described with reference to FIGS. **5** and **6**, in which like reference numerals refer to like elements in other embodiments, and which illustrate the same servicing device **10** in a measuring mode of operation (FIG. **5**), and a charging mode of operation (FIG. **6**). With respect to FIGS. **5** and **6**, the servicing device **10** may include a valve **200** comprising a plunger **250** slidably disposed in a bore **252** disposed in a housing **400**. The plunger **250** may include a first annular recess **254** and a second annular recess **256** provided between sealing rings **255**. The plunger **250** may be biased against a stop **251** by a spring **253** disposed in the bore **252**.

In one embodiment, as shown in FIGS. **5** and **6**, the bore **252** may have a substantially horizontal orientation within the housing **400**. The horizontal orientation of the bore **252** may permit a substantially compact arrangement of the first port **110**, the second port **120**, the measurement device **14**, and the plunger **250**. In this manner, the servicing device **10** may have a small height profile. The small height profile may lead to advantages in some embodiments such as, for example, easier packaging and/or shipping of the device **10**.

The servicing device **10** may further include a venting orifice **258** formed in the housing **400**. The orifice **258** is in communication with the bore **252** and may be in selective communication with the second port **120** depending on the position of the plunger **250**. In some cases, pressure may build up in the second port **120** during operation of the device **10**. When the device **10** is in a charging mode of operation, this built up pressure may cause the measurement device **14** to display a reading even though the measurement device **14** is not in communication with the coolant system. The orifice **258** is adapted to vent pressure from the second port **120** to ambient when the orifice **258** is in communica-

tion with the second port **120**. As a result, the measurement device **14** may indicate a measurement reading of substantially zero such that the user does not receive an inaccurate measurement reading during charging operation.

The plunger **250** may be adapted to provide selective communication between (i) the first port **110** and the second port **120**, and (ii) the first port **110** and the third port **130**, in response to an actuation of the plunger **250**. The actuation of the plunger **250** may be provided by a mechanical link, or other suitable means. As discussed above, the first port **110** may be adapted to connect to a coolant system (not shown), the second port **120** may be connected to a measurement device **14**, and the third port **130** may be adapted to connect to a coolant supply container **30**.

Operation of the embodiment of the present invention shown in FIGS. **5** and **6** will now be described with reference to FIGS. **5** and **6**. While the plunger **250** is in the position shown in FIG. **5**, the device **10** may be used to measure the pressure of the refrigerant in the coolant system. While in this position, the plunger **250** is biased against the stop **251** by the spring **253**. The annular recess **254** of the plunger **250** may provide communication between the first port **110** (which is connected to the coolant system) and the second port **120** (which is connected to the measurement device **14**). The sealing rings **255** may substantially prevent communication between the third port **130** and either of the first or second ports **110** and **120**. As a result, the second port **120** experiences pressure similar to the pressure of the first port **110**, which, in turn, is similar to the internal pressure of the coolant system. In this manner, the measurement device **14** may measure the coolant system pressure (or other parameter in alternative embodiments).

The user may inspect the measurement device **14** and determine if additional coolant is required. In some embodiments, the measurement device **14** may indicate the need for additional coolant, for example, by displaying a measurement reading. If a need for additional coolant is determined, the user may use the servicing device **10** to charge the coolant system with more coolant from the coolant supply container **30**.

When charging operation is desired, an actuation force may be applied to the plunger **250**. When the actuation force is applied, the plunger **250** moves within the bore **252** against the bias of the spring **253** (in a rightward direction as shown in the embodiment depicted in FIGS. **5** and **6**). In this position, as shown in FIG. **6**, the sealing rings **255** allow communication between the first and third ports **110** and **130**. As a result, coolant from the coolant supply container **30** may flow around the annular recess **254**, and past first port **110** to the coolant system. At the same time, the sealing rings **255** may substantially prevent communication between the second port **120** and either of the first or third ports **110** and **130**. The second port **120** may, however, communicate with the orifice **258**, and pressure in the second port **120** may be vented to ambient through the orifice **258**. As a result, the measurement device **14** may indicate a measurement reading of substantially zero such that the user does not receive an inaccurate measurement reading during charging operation. The user may apply an actuation force to the plunger **250** as desired to alternate between providing coolant to the coolant system and measuring a parameter of the coolant system. In other respects, the servicing device **10** shown in FIGS. **5** and **6** may operate substantially the same as the device shown in FIGS. **3**A-C.

Another embodiment of the present invention will now be described with reference to FIGS. **7**A and **7**B, in which like reference numerals refer to like elements in other embodiments, and which illustrate the same servicing device **10** in a measuring mode of operation (FIG. **7**A), and a charging mode of operation (FIG. **7**B). With respect to FIGS. **7**A and **7**B, the plunger **250** may include one annular recess **254** provided between sealing rings **255**. The plunger **250** may be adapted to provide selective communication between (i) the first port **110** and the second port **120** (as shown in FIG. **7**A), and (ii) the first port **110** and the third port **130** (as shown in FIG. **7**B), in response to an actuation of the plunger **250**. In this manner, the embodiment of the present invention shown in FIGS. **7**A and B may operate substantially as described above in connection with the servicing device **10** shown in FIGS. **5** and **6**.

Another embodiment of the present invention is shown in FIG. **8**, in which like reference numerals refer to like elements. A valve **700** having an inner piston **710** and an outer piston **720** may be slidably disposed in a bore **705** formed within the housing **400**. An inner annular recess **712** may be formed in the inner piston **710** and an outer annular recess **722** may be formed in the outer piston **720**. A first sealing ring **702** provides a seal between the outer piston **720** and the bore **705**. A first spring **730** disposed in an inner cavity **735** may bias the valve **700** away from a check valve **630**, which is biased against its seat **631** by a second spring **635**. A stop **704** may prevent the valve **700** from falling out of the bore **705** when the device **10** is in the position shown in FIG. **8**.

The device **10** may be adapted to connect to a component of a coolant system (not shown). For example, the device **10** may be adapted to connect to the low pressure service port of the coolant system. The low pressure service port may include a Schrader valve. As will be apparent to those of ordinary skill in the art, the Schrader valve may include a valve stem centrally disposed within a circumferential member. When the Schrader valve stem is actuated, the valve opens and permits substantially one-way communication into the coolant system through the low pressure service port.

An outer cavity **740** may be formed in the outer piston **720** and adapted to connect the device **10** to the coolant system. A first interior protrusion **714** may extend from the inner piston **710** toward the check valve **630**, and a second interior protrusion **716** may extend from the inner piston **710** toward the cavity **740**. An exterior protrusion **725** may extend from the outer piston **720** into the cavity **740**. A detent **721** may be formed in the outer piston **720**. The first interior protrusion **714** may be adapted to selectively contact and open the check valve **630**. The exterior protrusion **725** may be adapted to selectively contact and open an element of the coolant system, such as, for example, the Schrader valve stem disposed in the low-pressure service port. The second interior protrusion **716** and the outer piston detent **721** may be adapted to contact the circumferential member of the low pressure service port. The second interior protrusion **716** may extend into the cavity **740** beyond the outer piston detent **721** such that during operation the circumferential member of the service port contacts the second interior protrusion **716** before contacting the detent **722**. A second sealing ring **706** may be disposed in the cavity **740** and may sealingly engage the circumferential member of the service port during operation. A passage **718** formed in the inner piston **710** may provide communication between the outer cavity **740** and the inner cavity **735**.

The device **10** may further include a locking mechanism comprising a plurality of ball bearings **724** disposed in corresponding holes **723** formed in the outer piston **720**. The balls **724** are adapted to rest against a shoulder **726** formed

in the housing **400** and, in this manner, selectively prevent the upward movement of the outer piston **720** within the bore **705**. As the inner piston **710** moves axially upward within the piston bore **705** toward the check valve **630**, the balls **724** are exposed to the inner annular recess **712**. At this point, the balls **724** are adapted to slide off the shoulder **726** and into the inner recess **712**. With the balls **724** in the inner recess **712**, the balls **724** may clear the shoulder **726**, and the outer piston **720** is able to move axially upward within the piston bore **705**.

The valve **700** may be adapted to switch between a first position (shown, for example, in FIG. **8**) in which the valve provides communication between the coolant system and the measuring device **14**, and a second position in which the valve provides communication between the coolant system and the coolant supply. In this manner, the valve **700** may selectively switch between measuring a fluid parameter of the coolant system and charging the coolant system with coolant.

Operation of the embodiment of the present invention shown in FIG. **8** will now be described. Use of the servicing device **10** may be initiated by connecting the device to the low pressure service port of a coolant system. The device may be connected to the service port such that the exterior protrusion **725** contacts the Schrader valve stem disposed in the service port, and the circumferential member sealingly engages the second sealing ring **706**. Using the grip **430**, a force may be applied to the device **10** in the direction of the arrow **750** shown in FIG. **8**. A level of force may be applied such that the exterior protrusion **725** depresses the valve stem (not shown) disposed in the service port and opens the valve. Because the circumferential member of the service port sealingly engages the second sealing ring **706**, gas from the coolant system is substantially prevented from communicating with ambient. The balls **724** remain abutted against the shoulder **726**, and the outer piston **720** is substantially prevented from moving axially upward within the bore **705**. In this position, as shown in FIG. **8**, the passage **718** may provide communication between the outer cavity **740** and the inner cavity **735**, which, in turn, communicates with the outer recess **722** and the second port **120**. In this manner, the coolant system may communicate with the second fluid port **120**. As a result, the second port **120** experiences pressure similar to the pressure of the outer cavity **740**, which, in turn, is similar to the internal pressure of the coolant system, and the measurement device **14** may measure the coolant system pressure (or other parameter in alternative embodiments).

The user may inspect the measurement device **14** and determine if additional coolant is required. In some embodiments, the measurement device **14** may indicate the need for additional coolant, for example, by displaying a measurement reading. If a need for additional coolant is determined, the user may use the servicing device **10** to charge the coolant system with more coolant from the coolant supply. It should be noted that if the coolant supply **30** is attached to the servicing device **10**, coolant does not substantially communicate with the inner cavity **735**, and correspondingly, the coolant system, because of the check valve **630**.

When the addition of coolant is desired, the coolant supply **30** may be attached to the receiving end **410** of the servicing device **10**, if not already attached. The piercing member **620** pierces the seal of the coolant supply. Because the check valve **630** is biased against its seat **631** by the spring **635**, coolant still does not substantially communicate with the inner cavity **735**, and correspondingly, the coolant system. Using the grip **430**, an additional force may be applied to the device **10** in the direction of the arrow **750** shown in FIG. **8**. A level of force may be applied such that the circumferential member of the low pressure service port acts on the second inner protrusion **716** and overcomes the biasing force of the spring **730**, causing the inner piston **710** to travel upward within the bore **705**. Because the inner protrusion **716** extends into the cavity **740** beyond the outer piston detent **721**, the circumferential member does not initially contact the outer piston detent **721**. As the inner piston **710** travels axially upward within the bore **705**, the balls **724** are exposed to the inner annular recess **712**. The balls **724** slide off the shoulder **726** and into the inner recess **712**. At the same time, the circumferential member of the service port begins to contact the outer piston detent **721**. With the balls **724** in the inner recess **712**, the balls **724** may clear the shoulder **726**, and the outer piston **720** and the inner piston **710** now travel upward together within the bore **705**. The interior protrusion **714** may then contact and unseat the check valve **630**. Coolant from the coolant supply may now flow into the inner cavity **735**, through the passage **718** and into the outer cavity **740**, and, finally into the coolant system. At the same time, as the outer piston **720** travels upward, the first sealing ring **702** travels past the second fluid port **120** and substantially prevents communication between the second port **120** and the inner cavity **735** such that the cavity **740**, and correspondingly the coolant system, no longer communicates with the measuring device **14**.

In one embodiment, pressure in the second port **120** may vent to ambient through space formed between the outer piston **720** and the bore **705**. The space may be small enough such that the travel of the outer piston **720** within the bore is not adversely affected. As a result of the vented pressure, the measurement device **14** may indicate a measurement reading of substantially zero such that the user does not receive an inaccurate measurement reading during charging operation.

When coolant supply is no longer desired, the force applied to the device may be reduced. This may cause the interior protrusion **714** to move out of contact with the check valve **630** under the bias of the spring **730**. The check valve **630** may return to its seat **631** and prevent communication between the coolant supply and the inner cavity **735**. In this manner, the device may return to the measuring position, shown in FIG. **8**. The user may apply an actuation force to the device **10** as desired to alternate between providing coolant to the coolant system and measuring a parameter of the coolant system.

Another embodiment of the present invention is shown in FIG. **9**, in which like reference numerals refer to like elements. The servicing device **10** shown in FIG. **9** is similar to that shown in FIG. **8**, with the addition of a trigger **340** operatively connected to a trigger valve assembly **345**. The trigger valve assembly **345** may include a trigger pin **342** slidably disposed in a second bore **344**, and a trigger valve **346** disposed at one end of the trigger pin **342**. The trigger pin **342** may be operatively connected to the trigger **340** at a second end. The trigger valve **346** may be biased against its seat **347** by a trigger spring **348**. A sealing ring **349** may be disposed between the trigger valve **346** and the trigger valve seat **347**.

The trigger valve assembly **345** may be adapted to move between a first position (shown, for example, in FIG. **9**) and a second position (not shown) in which the trigger valve **346** is pushed off its seat **347** in response to an actuation force from the trigger **340**. In the first position, the trigger spring **348** may bias the trigger valve **346** against its seat, substantially preventing coolant from the coolant supply source **30** from communicating to the coolant system through the third

port **130**. In the second position, when the trigger valve **346** is pushed off its seat **347** in response to an actuation force from the trigger **340**, coolant may communicate with the third fluid port **130**.

Operation of the embodiment of the present invention shown in FIG. **9** is substantially as described above with reference to FIG. **8**, with an additional feature. When the addition of coolant is desired, a level of force may be applied such that the circumferential member of the low pressure service port acts on the second inner protrusion **716** and overcomes the biasing force of the spring **730**, causing the inner piston **710** to travel upward within the bore **705**. Because the inner protrusion **716** extends into the cavity **740** beyond the outer piston detent **721**, the circumferential member does not initially contact the outer piston detent **721**. As the inner piston **710** travels axially upward within the bore **705**, the balls **724** are exposed to the inner annular recess **712**. The balls **724** slide off the shoulder **726** and into the inner recess **712**. At the same time, the circumferential member of the service port begins to contact the outer piston detent **721**. With the balls **724** in the inner recess **712**, the balls **724** may clear the shoulder **726**, and the outer piston **720** and the inner piston **710** now travel upward together within the bore **705**. The interior protrusion **714** may then contact and unseat the check valve **630**. An actuation force may be applied to the trigger **340**, causing the trigger pin **342** to slide upward within the bore **344**, and unseating the trigger valve **346**. In this position, coolant from the coolant supply may flow through the third fluid port **130** past the check valve **630** to the coolant system. In other respects, the device **10** shown in FIG. **9** operates substantially as the device shown in FIG. **8**.

In another embodiment of the present invention, shown in FIG. **10**, in which like reference numerals refer to like elements, the trigger valve assembly **345** shown in FIG. **9** may be adapted to receive a pulling-force instead of a pushing force. When charging operation is desired, a pulling force may be applied to the trigger pin **342** in the direction of the arrow shown. This force may cause the trigger valve **346** to move from its seat **347**. In other respects, the device **10** shown in FIG. **10** operates substantially the same as the device shown in FIG. **9**.

A coolant system servicing device **800** will now be described with reference to FIG. **11**, in which like reference numerals refer to like elements in other embodiments. The servicing device **800** may include a valve **810** having a bore **805** disposed in a housing **400**, and a valve actuator **820**. The valve may be adapted to provide selective communication between a coolant supply passage **802** and a charging passage **804**. The coolant supply passage **802** may be adapted to connect to a coolant supply container **30**, and the charging passage **804** may be adapted to connect to a coolant system (not shown). The device **800** is adapted to switch between a charging mode of operation (as shown in FIG. **11**), in which coolant is supplied to the coolant system, and a non-charging mode of operation, in response to actuation of the valve actuator **820**.

The valve **810** may include a plunger **812** slidably disposed in the bore **805**. A plunger spring **814** biases the plunger **812** against a plunger seat **816**. The valve bore **805** may be in fluid communication with the coolant supply passage **802** and selective communication with the charging passage **804** depending on the position of the plunger **812**.

The servicing device **800** may further comprise a valve actuator **820** for selectively applying an actuating force to the valve **810**. In one embodiment, the valve actuator **820** may be adapted to receive a squeezing or gripping force. The valve actuator **820** may include a trigger **822** pivotally attached to the housing by a pin **824**. Single or dual arms **826** may be attached to the trigger **822** at a first end by a pin **827** and to the plunger **812** at a second end. When the trigger **822** is squeezed in the direction of the arrow **830**, the trigger **822** rotates about the pin **824**. The rotation of the trigger **822** forces the arm(s) **826** leftward, overcoming the rightward bias of the plunger spring **814**, and moving the plunger **812** from a non-charging position in the bore **805** to a charging position (as shown in FIG. **11**). Release of the trigger **822** may allow the plunger **812** to return to its non-charging position under the influence of the spring **814**.

The servicing device **800** may further comprise means **500** for connecting the device to the coolant system (not shown). The connecting means **500** may include a hose assembly **500** having a first end connected to the charging passage **804** and a second end operatively connected to the coolant system. An adapter **600** for connecting the servicing device **800** to the coolant supply container **30** may be disposed in the housing **400**. The adapter **600** may include a piercing member **620** having a sharp distal end such that when the adapter engages the coolant supply container **30**, the piercing member **620** pierces the seal of the container. The servicing device **800** may further comprise a receiving end **410** adapted to secure the device to the coolant supply container **30**.

In one embodiment of the servicing device **800**, the valve bore **805** may have a substantially horizontal orientation within the housing **400**, and may be oriented substantially perpendicular to the supply passage **802**. In this embodiment, the flow of coolant from the valve bore **805** is in a substantially horizontal direction toward the rear of the device, as shown in FIG. **11**. The charging passage **804** may be provided with a switch-back orientation such that the flow of coolant from the valve bore **805** is directed toward the front of the device **800** where the second end of the hose assembly **500** extends from the device and is operatively connected to the coolant system. In this embodiment, the charging passage **804** may include a first portion oriented substantially parallel to the valve bore **805** and a second portion oriented substantially unparallel to the valve bore **805**. In an alternative embodiment, the entire charging passage **804** may be oriented substantially parallel to the valve bore **804**.

The orientation of the valve bore **805** and/or the charging passage **804** may permit a compact arrangement of the servicing device **800**. In this manner, the servicing device **10** may have a small height profile. In some embodiments, the height of the housing **400** may be in the range of about 10% to about 30% of the combined height of the housing **400** and the coolant supply container **30**. The proportional height of the housing **400** may vary depending on the size of the coolant supply container used. The small height profile may lead to advantages in some embodiments such as, for example, easier packaging and/or shipping of the device **10**.

Operation of the servicing device **800** will now be described with reference to FIG. **11**. The servicing device **800** may be connected to the coolant supply container **30** at the receiving end **410** and to an automobile coolant system by the hose assembly **500**. At this time the trigger **822** may be in an extended position (not shown). Connection of the servicing device **800** to the coolant supply may cause the piercing member **620** to pierce a seal on the top of the container. As a result, pressurized coolant may pass through the piercing member **620**, the adapter **600**, and into the valve bore **805**. While the servicing device **800** is in the non-charging position, the refrigerant may not be able to flow

past the plunger **812**, which is biased against its seat **816** by the spring **814**. As a result, the refrigerant may not flow into the charging passage **804**.

If a need for additional coolant is determined, the user may use the servicing device **800** to charge the coolant system with more coolant from the coolant supply **30**. When charging operation is desired, an actuation force may be applied to the valve **810** using the trigger **822**. When the trigger **822** is squeezed in the direction of the arrow **830**, the trigger **822** rotates about the pin **824**, causing the arm(s) **826** to move leftward against the bias of the spring **814**. The leftward motion of the arm(s) **826** may in turn cause the plunger **812** to move leftward within the bore **805**. In this position, as shown in FIG. **11**, the plunger **812** may be moved off its seat **816**, opening communication between the bore **805** and the charging passage **804**. The coolant may then flow from the bore **805** and through the charging passage **804**. As the coolant flows through the charging passage **804**, the coolant may be redirected toward the front of the device, and may flow through the hose assembly **500** and into the coolant system. The user may apply an actuation force to the valve **810** by squeezing the trigger **822** as desired to alternate between providing coolant to the coolant system and not providing coolant.

In some embodiments, the servicing device **800** may be adapted for one-handed operation. In this manner, a user may hold the coolant supply container **30** and apply a gripping force to the trigger **822** with one hand. In some embodiments, as shown in FIG. **11**, the device housing **400** may include a contoured surface **440**. The contoured surface **440** may be adapted to receive the area of the user's hand between the thumb and index finger. With the user's hand in this position, the trigger **822** may be adapted to receive a gripping force from one or more of the user's fingers.

An adapter **900** for connecting a coolant system servicing device **10** to a coolant supply container **30** will now be described with reference to FIGS. **12** and **13**. The adapter **900** may be disposed in a coolant system servicing device housing **400**. The adapter **900** may be used in connection with a servicing device including, but not limited to, those depicted in embodiments of the present invention. The adapter **900** may be used to connect the servicing device **10** to the coolant supply container **30** in a manner that first sealingly engages the device with the container, and then piercingly engages the device with the container. FIG. **12** illustrates the adapter **900** sealingly engaged with the coolant supply container **30**, and FIG. **13** illustrates the adapter **900** piercingly engaged with the container **30**.

The adapter **900** may include a connecting hub **905** for connecting the adapter to the servicing device housing **400**, and a bore **910** for engaging a nozzle **31** of the coolant supply container **30**. In one embodiment, the bore **910** may be threaded for engaging an Acme threaded coolant supply container **30**. A user may rotate the coolant supply container **30** such that the nozzle **31** advances up the threads disposed in the bore **910**. In other embodiments, the bore **910** may be adapted to engage a supply container having a quick connect fitting, and/or any other suitable container fitting.

A sealing member **912** may be slidably disposed in the bore **910**. The sealing member **912** may include a shoulder **913** adapted to sealingly engage the nozzle of the coolant supply container **30**. In one embodiment, the sealing member **912** may comprise a deformable material, such as, for example, rubber. Other suitable materials are considered possible and are well within the scope and spirit of the present invention. A sealing spring **914** may bias the sealing member **912** into the bore **910**. The upward travel of the sealing member **912** within the bore **910** may be limited by a travel stop **916**. A contact plate **918** may be disposed between the sealing member **912** and the sealing spring **914**.

A piercing member **920** having a sharp distal end **925** may be disposed in the connecting hub **905**. The piercing member **920** may be disposed such that, when the adapter is in the position shown in FIG. **12**, the piercing member **920** does not extend into the bore **910** beyond the sealing member **912**. In this manner, the coolant supply container **30** contacts the shoulder **913** of the sealing member **912** before contacting the distal end **925** of the piercing member. When the piercing member **920** engages the coolant supply container **30**, the piercing member **920** pierces the seal of the container. The piercing member **920** is preferably hollow so as to allow the contents of the coolant supply container **30** to exit from the container into the servicing device **10**.

Operation of the adapter **900** will now be described with reference to FIGS. **12** and **13**. A servicing device **10** including the adapter **900** may be connected to an automobile coolant system at a first end (not shown). When charging of the coolant system is required, the nozzle **31** of the coolant supply container **30** may be connected to the bore **910**. A user may rotate the container such that the nozzle **31** advances up the threads disposed in the bore **910**. As the nozzle **31** advances upward within the bore **910**, the nozzle **31** first contacts the shoulder **913** of the sealing member **912**. In this position, as shown in FIG. **12**, the piercing member **920** does not pierce the seal of the container **30**. As the container **30** is further engaged with the bore **910**, the nozzle **31** remains in contact with the sealing member **912**. The nozzle **31** pushes the sealing member **912** in an upward direction within the bore **910** against the bias of the sealing spring **914**. As the sealing member **912** approaches the travel stop **916**, the piercing member **920** engages the coolant supply container **30**, and pierces the seal of the container, as shown in FIG. **13**. As a result, pressurized coolant may pass through the piercing member **620**, through the servicing device **10** and into the coolant system. Because the nozzle **31** remains sealingly engaged with the sealing member **912**, coolant is substantially prevented from communicating with the bore **910** and the ambient environment during operation.

It will be apparent to those skilled in the art that various other modifications and variations can be made in the construction, configuration, and/or operation of the present invention without departing from the scope or spirit of the invention. For example, it is appreciated that the present invention may include a combination of one or more of the servicing device **10**, the measurement device **14**, and the coolant supply source **30** provided as a complete product or kit. The depiction of the housing **400**, the valve actuator **300**, and the valve **200** are intended to be illustrative only, and not limiting. It is appreciated that the size and shape of the housing **400** may vary markedly without departing from the intended scope of the present invention. These and other modifications to the above-described embodiments of the invention may be made without departing from the intended scope of the invention.

What is claimed is:

**1**. An apparatus for servicing a coolant system adapted to receive coolant from a coolant supply, said apparatus comprising:

a device for measuring a parameter of the coolant system;

means for selectively switching between providing: (i) communication between the coolant system and said measuring device, and (ii) communication between the coolant system and the coolant supply and wherein

said means for selectively switching substantially prevents communication between the coolant system and the measuring device when the coolant system communicates with the coolant supply.

**2**. The apparatus of claim **1**, wherein the switching means comprises:

a three-way valve; and

a mechanical actuator operatively connected to said three-way valve.

**3**. The apparatus of claim **2**, wherein said mechanical actuator includes a pivoting element.

**4**. The apparatus of claim **2**, wherein said mechanical actuator includes a cam element.

**5**. The apparatus of claim **2**, wherein said mechanical actuator is adapted to receive a squeezing force.

**6**. The apparatus of claim **2**, wherein said valve actuator comprises: a handle; and a mechanical link connecting said handle to said valve.

**7**. The apparatus of claim **2**, wherein said handle comprises a pistol grip.

**8**. The apparatus of claim **2**, wherein the three-way valve comprises: a plunger slidably disposed in a central body; and a spring biasing said plunger into a first position to provide communication between the coolant system and the measuring device.

**9**. The apparatus of claim **2**, wherein said valve comprises: an outer piston slidably disposed in a bore in the apparatus; an inner piston disposed in said outer piston; and a cavity formed in said outer piston, said cavity adapted to connect to the coolant system.

**10**. The apparatus of claim **9** further comprising: a check valve disposed near one end of the bore, and wherein said valve comprises: an exterior protrusion extending from said outer piston and adapted to contact the coolant system; and an interior protrusion extending from said inner piston and adapted to engage a check valve provided in the apparatus.

**11**. The apparatus of claim **1**, wherein said measuring device comprises a pressure gauge.

**12**. The apparatus of claim **1**, wherein the coolant system comprises an automobile air conditioner.

**13**. The apparatus of claim **1**, wherein the coolant supply comprises a pressurized container of at least refrigerant.

**14**. A device for servicing a coolant system, said device comprising:

an outer housing;

a central body disposed within the outer housing, said central body having an internal bore and first, second, and third fluid ports communicating with said internal bore;

the first fluid port configured for fluid communication with a coolant system, the second fluid port in fluid communication with a measuring device, and the third fluid port configured for fluid communication with a coolant supply;

a valve disposed in said internal bore, said valve adapted to attain a first position in which there is communication between said first fluid port and said second fluid port, and a second position in which there is communication between said first fluid port and said third fluid port;

a valve actuator operatively connected to said valve and wherein

the valve substantially prevents communication between the coolant system and the measuring device when the coolant system communicates with the coolant supply.

**15**. The device of claim **14**, wherein said valve comprises: a plunger slidably disposed in the internal bore; and a spring biasing said plunger into a first position.

**16**. The device of claim **15**, wherein said plunger provides substantially exclusive communication between said first and second fluid ports when the valve is in the first position.

**17**. The device of claim **16**, wherein said plunger provides substantially exclusive communication between said first and third fluid ports when the valve is in the second position.

**18**. The device of claim **14**, further comprising a coolant container connection adapter, said adapter being connected to the central body via a fluid passage.

**19**. The device of claim **18**, wherein the adapter comprises a piercing member.

**20**. The device of claim **18**, further comprising a check valve disposed between the central body and the adapter.

**21**. The device of claim **14**, wherein said valve actuator comprises: a handle; and a mechanical link connecting said handle to said valve.

**22**. The device of claim **21**, wherein said handle comprises: a blade having a cam edge; and a cam surface on said mechanical link for receiving the cam edge of said blade.

**23**. The device of claim **22**, wherein said mechanical link comprises one or more arms pivotally attached to the valve.

**24**. A system for servicing an automobile air conditioner, said system comprising:

a coolant supply source;

means for measuring a parameter of the coolant in the automobile air conditioner; and

a device for servicing the automobile air conditioner, said device comprising:

a central body;

a valve disposed in said central body; and

a valve actuator, wherein said valve is adapted to provide selective communication between the automobile air conditioner and (i) said measuring means, and (ii) said coolant supply source, responsive to an actuation force from said valve actuator; and wherein

said valve substantially prevents communication between the automobile air conditioner and the measuring means when the automobile air conditioner communicates with the coolant supply source.

**25**. The system of claim **24**, wherein said measuring means comprises a pressure gauge.

**26**. The system of claim **25**, wherein said coolant supply source comprises a pressurized container of a refrigerant.

**27**. The system of claim **24**, wherein said valve comprises: a plunger slidably disposed in a bore formed in said central body between a first position and a second position; and a spring biasing said plunger in the first position.

**28**. The system of claim **27**, wherein when said plunger is in the first position, said measuring means measures a parameter of the automobile air conditioner, and when said plunger is in said second position, at least a portion of the coolant is released from the coolant supply source into the automobile air conditioner.

**29**. The system of claim **24**, wherein said valve actuator comprises: a handle; and a mechanical link connecting said handle to said valve.

**30**. The system of claim **29**, wherein said handle comprises: a blade having a cam edge; and a cam surface on said mechanical link for receiving the cam edge of said blade.

**31**. A method of servicing a coolant system using a servicing apparatus attached to a measuring device and a coolant supply, said method comprising the steps of:

attaching the servicing apparatus to the coolant system; and

selectively switching between providing: (i) communication between the coolant system and the measuring device, and (ii) communication between the coolant system and the coolant supply; and

further comprising the step of substantially preventing communication between the coolant system and the measuring device when the coolant system communicates with the coolant supply.

**32**. The method of claim **31**, wherein the step of selectively switching comprises the step of: providing an actuating force to the servicing apparatus for switching between measuring a coolant system parameter and providing coolant to the coolant system.

**33**. The method of claim **32**, wherein the step of providing an actuating force comprises the step of squeezing a handle of the servicing apparatus.

**34**. The method of claim **32**, wherein the step of providing an actuating force comprises the step of contacting an exterior protrusion of the servicing apparatus against a service port of the coolant system using a first level of force to provide communication between the coolant system and the measuring device and a second level of force to provide communication between the coolant system and the coolant supply.



**35**. The method of claim **31**, further comprising the step of substantially preventing communication between the coolant system and the coolant supply when the measuring device communicates with the coolant supply.

**36**. The method of claim **35**, further comprising the step of venting pressure from the measuring device when the coolant system communicates with the coolant supply.

**37**. The method of claim **35**, further comprising the step of displaying a zero measurement on the measuring device when the coolant system communicates with the coolant supply.

**38**. A method of servicing a coolant system using a servicing apparatus attached to a measuring device and a coolant supply, said method comprising the steps of: attaching the servicing apparatus to the coolant system; and selectively providing a squeezing force to the servicing apparatus for switching between measuring a coolant system parameter and providing coolant to the coolant system.

* * * * *

# EXHIBIT B

electric vehicles with non-belt driven (electric driven) compressor.
para usar en vehiculos hibridos/eléctricos con compresor
accionamiento eléctrico) sin correa de transmisión.

15 oz. Refrigerant R-134a (1,1,1,2 Tetrafluoroethane), 3 oz. Additives

IDQ Holdings, Inc.,Garland, TX 75041 • www.idqusa.com
Assembled in U.S.A. from components of U.S.A. and China
AirBoost® is a registered trademark of Mainstream Engineering
US Patents 5,826,436, 5,987,902 and 7,260,943.
For tech support call: 888-318-5454


QUESTIONS? NEED HELP?
Technical Support Line: 1(888)318-
¿NECESITA MAS AYUDA?
Para Soporte Técnico llamar: 1-888-318-
CONTENTS/CONTENIDO: 17 oz. Refrigerant R-134a (1,1,1,2 Tetrafluoroethane
IDQ Holdings, Inc.
2901 West Kingsley Rd., Garland, TX 75041
www.acprocold.com
US Patents 5,826,436, 5,987,902 and 7,260,943.
Assembled in U.S.A. from components of U.S.A and China
Not for use in hybrid/electric vehicles with non-belt driven (electric driven) compressor.
No apto para usar en vehículos híbridos/eléctricos con compresor (de accionamiento eléctrico) sin correa de transmisión.

# EXHIBIT C

# United States of America
## United States Patent and Trademark Office

# ASK THE PRO

**Reg. No. 4,244,354**

**Registered Nov. 20, 2012**

**Int. Cl.: 37**

**SERVICE MARK**

**PRINCIPAL REGISTER**

IDQ OPERATING, INC. (NEW YORK CORPORATION)
2901 WEST KINGSLEY ROAD
GARLAND, TX 75041

FOR: VEHICLE AIR CONDITIONING TECHNOLOGICAL CONSULTATION SERVICES IN CONNECTION WITH THE MAINTENANCE OF VEHICLE AIR CONDITIONERS; VEHICLE AIR CONDITIONING TECHNOLOGICAL CONSULTATION SERVICES IN CONNECTION WITH THE REPAIR OF VEHICLE AIR CONDITIONERS; VEHICLE AIR CONDITIONING WEB SITE CONSULTATION IN CONNECTION WITH THE MAINTENANCE OF VEHICLE AIR CONDITIONERS; VEHICLE AIR CONDITIONING WEB SITE CONSULTATION IN CONNECTION WITH THE REPAIR OF VEHICLE AIR CONDITIONERS, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 5-1-2011; IN COMMERCE 5-1-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-386,984, FILED 8-2-2011.

DARRYL SPRUILL, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

# EXHIBIT D


AeroCool
1003107
Auto Air Conditioning
R-134a
Refrigerant
with Reusable
Charging Hose
-in-One Solution to Restore A/C Cooli
ks in Minutes with Quick and Easy Trigger Charging
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134a Automotive A/C Systems Only. Do Not
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contents under pressure. Read carefully all other
precautions on back panel.
ADVERTENCIA:
Solo Para Sistemas Automotrices A/C 134a. No
Buscar Con Refrigerante 12 (R12).
Contenido bajo presión. Leer atentamente todas
las demás precauciones en el panel trasero.
NET WT. 18 oz. (510g)

HOW WAS YOUR SHOPPING
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¿Cómo fue su experiencia
de compra hoy?

Please complete our
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ID #: 7HVZYXC29FB

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---

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MANAGER PATTI BOYD
3820 STATE HIGHWAY 64 W
TYLER TX 75704

ST# 1022 OP# 00004315 TE# 95 TR# 07375

| | | |
|---|---|---|
| R134A KIT | 088634500072 | 23.44 X |
| R134A KIT | 088634500072 | 23.44 X |
| REFRIGRANT | 088634500050 | 6.88 X |
| | SUBTOTAL | 53.76 |
| TAX 1 | 8.250 % | 4.44 |
| | TOTAL | 58.20 |
| | CASH TEND | 100.00 |
| | CHANGE DUE | 41.80 |

# ITEMS SOLD 3

TC# 7374 1685 1623 7033 7140

Low Prices You Can Trust. Every Day.
06/11/15 15:00:42

# EXHIBIT E

SPEED STEED

Aerospace Communications Holdings, Co., Ltd



1. Can I use your products in my hybrid vehicles electric compressor?
2. Can I use R134a in my vehicle?
3. How to recharge or measure pressure with a trigger style recharge hose?
4. How to recharge or measure pressure with a T-handle or Gauge-Handle style recharge hose?
5. How to use an R134a charging hose to add/recharge R134a refrigerant to my auto A/C system?
6. Do I have to use a special tool to add R134a to my auto A/C?
7. How to shake the can during the charging?
8. Can I hold the upside down while charging?
9. What's the purity of SpeedSteed Refrigerant R134a?
10. Can I use R134a in my tractor ?
11. How to deal with can with redundant R134a?
12. How to conver from lb(pound) to oz(ounce)?
13. Which lubricant I can add,POE or PAG?
14. If I do not have a piercing stem/puncture pin on my tool, how can I use the can?
15. Refrigerant added to correct pressures but it's still not cooling, why?
16. My A/C is blowing cold but not as cold as I would like it. Will adding additional refrigerant make the air colder?
17. Is there any oil or sealant in the R134a?
18. How much refrigerant should I put in?

We recommend using a pressure gauge to determine an accurate fill. A color-coded gauge indicates whether you should continue filling (charging) or not. If you have just retrofitted from an R-12 system and had all the R-12 refrigerant removed, you should fill a system with R-134a at 80-85% of the original R-12 Volume. (Consult your owners manual or sticker under the hood for original R-12 volume).

| F.A.Q.S more>>

Can I use R134a in my vehicle?

How to recharge or measure pressure with

How to recharge or measure pressure with

How to use an R134a charging hose to ad

Do I have to use a special tool to add

If I do not have a piercing stem/punctu

Refrigerant added to correct pressure

Online message

Contact us

Technical suppor

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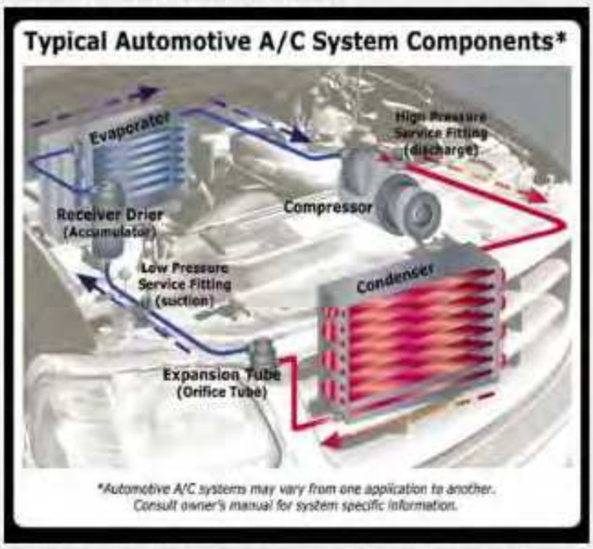
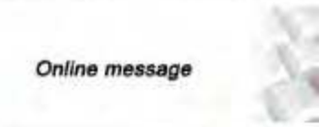
18. How much refrigerant should I put in?
19. How do I locate my low side service port?

The low side service valve is located in the line that runs from the compressor through the evaporator (firewall) and up to the condenser on the low pressure (suction) side of the system. R134a recharge hoses will only fit on the low side service port on all R134a vehicles and R-12 vehicles that have been converted to R134a.




The only fitting that the standard recharge equipment will fit is the low side service port.

F.A.Q.S
Can I use R134a in my vehicle?
How to recharge or measure pressur
How to recharge or measure pressur
How to use an R134a charging hose
Do I have to use a special tool to
If I do not have a piercing stem/p
Refrigerant added to correct pres





SPEED STEED

Aerospace Communications Holdings, Co., Ltd

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The answer here is two fold. It is possible that the system has a small leak, and now is low on refrigerant. This will allow the system to blow cold, but just not as cold as it used to. In this case check the low-side pressure and verify if the system is low on refrigerant. If it is low on refrigerant add refrigerant to the correct pressure. If your pressure is correct adding additional refrigerant will not make the system blow out colder air, but will in fact cause the system become overcharged. This causes the system to work less efficiently and will result in warmer air blowing from the vents.

| F.A.Q.S

Can I use

How to rechar

How to rechar

How to use ar

Do I have

If I do not

Refrigerar

Online m

Contact us

| Your current location > Home page > Privacy Policy

This site is maintained by Aerospace Communications Holdings Co., Ltd. ("Aerospace Communications"). Protecting your privacy is important to Aerospace Communications. This means we will protect your privacy by only asking for information necessary to answer your inquiry. We will not share any of your information with any individual outside our company without your consent. By ensuring that you are aware of and understand this Online Privacy Statement, we can provide you with better service. Please take a moment to read the following statement to learn how we handle your personally identifiable information.

## Scope of Application

This Online Privacy Statement applies only to the collection and use of information collected online on this site (www.Aerospace Communications.com). Other web sites that may be affiliated with Aerospace Communications may have different privacy statements.

## Confidentiality

| F.A.Q.S more>>

- Can I use R134a in my vehicle?
- How to recharge or measure pressure with
- How to recharge or measure pressure with
- How to use an R134a charging hose to add
- Do I have to use a special tool to add R
- If I do not have a piercing stem/punctur
- Refrigerant added to correct pressures b

Online message

Contact us

Personal Information is that information, which can be used to find you, make contact with you, or determine your identity. Other information when linked to your Personal Information becomes Persona Informl

ation. All personal information, such as your name, postal and e-mail address or telephone number, is considered private and confidential. This personal information is stored in a secure location, is accessible only by designated staff, and is used only for the purposes that you have given us permission for, such as, the provision of services. Aerospace Communications guarantees that no personal information will be released to an individual or corporation except when client authorization is received allowing the informatien to be released.

## Collection of Information

Various methods are used to collect user information. All this information is all protected by the Aerospace Communications privacy policy and will not be released to any third party without consent from the client.

We retain information which may be personal and given voluntarily at other times, including but not limited to when you provide opinions pertaining to, appreciation comments or complaints about the service and/or products being provided by Aerospace Communications.

Aerospace Communications does not use cookies to obtain information about you.

## Non-Disclosure of Personal Information

We will not reveal your Personal Information to unaffiliated third parties. There are, however, some

limited circumstances in which we may need to disclose Personally Identifiable Information about a customer.

Aerospace Communications will be legally bound to reveal information, including Personal Information, to the extent it reasonably believes it is required to do so by law. If Aerospace Communications receives legal process calling for the disclosure of any of its clients Personal Information we will, if permitted by law, attempt to notify the client via the e-mail address you supplied during registration within a reasonable amount of time before we respond to the request.

## Changing or Removing Information

Since general tracking information is anonymous, we have no way to locate this information obtained by your use of the service. In addition, this information is often aggregated. Therefore, we cannot remove the information obtained from you or as a result of your usage of the website or service.

## Security

We do not encrypt your normal web sessions with the Service using SSL.

We employ reasonable and current security methods to prevent unauthorized access, maintain data accuracy, and ensure correct use of information.

Your personal data will be stored within a database that is located behind a firewall for added security. The server housing the database is physically protected at a secure site and is monitored.

No data transmission over the Internet or any wireless network can be guaranteed to be secure. As a result, while we try to protect your personal information, we cannot ensure or guarantee the security of any information you transmit to us, and you do so at your own risk.

## Privacy Policy Change

Aerospace Communications may change its privacy policy, but all changes made regarding disclosure of Personal Information to third parties will be made after notification through electronic means prior to the date the modified policy takes effect. Any new policy will have effect only, to information gathered after the new policy effective date.

# DO IT YOURSELF

# CALIFORNIA

## *A Guide to Proper A/C System Recharging*

*Better Recycle Better California!*

Refrigerant R-134a is a greenhouse gas. If leaked into the atmosphere, it contributes to global warming!

Effective January 1, 2010, an instant $10 California deposit and return program began. Returned, used containers will be recycled to recover remaining refrigerant.
A new, self sealing valve on cans of R-134a will help you avoid accidental discharges.

It is illegal to destroy or discard used or unused small refrigerant containers under Section 95360 et seq. of the California Code of Regulations.

Helpful tips while recharging:

- Check for and repair leaks before recharging.
- Using a gauge ensures proper fill levels
- Do not overcharge or undercharge the A/C system; both conditions will produce poor cooling performance. Too much refrigerant will raise system pressures and may result in compressor or other component damage.

- Check vent temperatures while charging. Cooler air should result as you're adding refrigerant.
- If you have added a can of refrigerant and are not getting cooler air - STOP! -see a professional! You may have leaks requiring repairs to the system.

**1.** CONSUMER PAYS DEPOSIT AT PURCHASE.
**2.** ALWAYS WEAR INSULATED GLOVES & SAFETY GLASSES.
**3.** IF SYSTEM REQUIRES RECHARGE MORE THAN ONCE A YEAR, IT HAS A LEAK. Diagnose and repair leaks before adding refrigerant.
**4.** READ THE LABEL and prepare by understanding the instructions.
**5.** IF NOT PRE-ASSEMBLED, ATTACH CHARGING HOSE TO REFRIGERANT CAN, following hose or can instructions.
**6.** TO IDENTIFY A/C FILL CAPACITY FOR YOUR SPECIFIC VEHICLE, LOCATE A/C SYSTEM NAMEPLATE in the engine compartment. NOTE THE COMPLETE SYSTEM CHARGE VOLUME. For optimal cooling, NEVER EXCEED MAX CHARGE.
**7.** LOCATE YOUR VEHICLE'S LOW SIDE A/C SERVICE PORT and remove the blue or black protective cap. It's a "SNAP"; the charging hose will only fit on the low-side port.

**8.** START THE ENGINE, turn on the A/C to maximum cooling, the fan switch to high and the temperature dial to full blue.
**9.** ATTACH QUICK CONNECTOR TO LOW-SIDE PORT by pulling back connecting ring or snapping into place. Check to assure it is securely locked.
**10.** DIAGNOSE A/C SYSTEM BEFORE ADDING REFRIGERANT using a charging hose with a gauge, an electronic meter or manifold gauge set. Compare gauge reading to the chart (*top of right column*). If pressure reading is below chart range, you may add refrigerant.
**11.** ADD REFRIGERANT by opening dispensing valve or pulling the trigger, as shown in the charging device's instructions
**12.** WHILE CHARGING, HOLD CAN UPRIGHT, AGITATING FREQUENTLY USING A 12 O'CLOCK TO 3 O'CLOCK MOTION. It takes 5 to 15 minutes to dispense a can of refrigerant.
**13.** CHECK PRESSURE GAUGE every minute or so. To accurately check pressure, refrigerant cannot be flowing. Follow instructions: release trigger or close dispensing valve to measure pressure.

*Better Recycle Better California!*

**NOTE: Ambient temp is the outside atmospheric temperature. Pressure may only be taken when compressor is running.**

**AMBIENT TEMPERATURE - PRESSURE CHART**

| If Ambient Temp (F°/ C°) is: | Low Pressure Gauge Should Read: |
|---|---|
| 65°F (18°C) | 25-35 psi |
| 70°F (21°C) | 35-40 psi |
| 75°F (24°C) | 35-45 psi |
| 80°F (27°C) | 40-50 psi |
| 85°F (29°C) | 45-55 psi |
| 90°F (32°C) | 45-55 psi |
| 95°F (35°C) | 50-55 psi |
| 100°F (38°C) | 50-55 psi |
| 105°F (41°C) | 50-55 psi |
| 110°F (43°C) | 50-55 psi |

**14.** REPEAT STEPS 10, 11, & 12 AS NEEDED, until correct pressure is reached, can feels empty, or refrigerant stops flowing. NOTE: If can feels empty, turn upside down for 1 minute to remove all contents. Signs of an empty can include no detectable refrigerant movement and can is no longer cold to the touch.
**15.** A PROPERLY CHARGED A/C SYSTEM will not only read correct gauge pressure but air exiting all interior vents should be the same approximate cooled temperature. For optimal cooling, DO NOT OVERCHARGE OR UNDERCHARGE!
**16.** REMOVE QUICK CONNECT FROM LOW-SIDE PORT by pulling connector ring back and straight up from service port. Replace protective cap on Low-Side Port.
**17.** REMOVE EMPTY CAN FROM CHARGING HOSE unless permanently attached.
**18.** RETURN ALL USED CONTAINERS WITH PROOF OF PURCHASE TO THE PLACE OF PURCHASE FOR RECYCLING & REFUND OF YOUR DEPOSIT.

*Better Recycle Better California!*

SPEED STEED

Aerospace Communications Holdings, Co., Ltd

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English Spain

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CALIFORNIA REGULATORY INFORMATION FOR CONSUMERS

According to California regulation signed into law in January 2009, any manufacturer or marketer of "small cans" of refrigerant must be certified by CARB (California Air Resources Board) in order to sell product in the state. The certification requirements include compliant containers with self-sealing valves, new consumer usage instructions, and an approved used can deposit & recycling program. Please click through the links below for additional information regarding the guidelines for both consumers and distributors.

California Regulations / Deposit & Return
Global Warming & Refrigerant
Proper Recharging: Step-by-Step (in Español)
Proper Recharging: Step-by-Step
Helpful Tips for Recharging

## Guidance Video of How to Recharge you A/C - California


F.A.Q.S more>>

- Can I use R134a in my vehicle?
- How to recharge or measure pressure with
- How to recharge or measure pressure with
- How to use an R134a charging hose to add
- Do I have to use a special tool to add R
- If I do not have a piercing stem/punctur
- Refrigerant added to correct pressures b


# EXHIBIT F

## Guidance video of how to recharge your auto A/C


How to Recharge Your Car AC with AC Pro
How to Recharge Your Car AC with AC Pro
A/C PRO

# EXHIBIT G

# Ask the Pro

Do you have an A/C related question? Feel free to "Ask the Pro" for expert advice about your vehicle's A/C.

Thanks for your question.

---

**Full Name** *

**Phone** *

### ### ###

**Email Address** *

Address (optional)

City

State

Zipcode

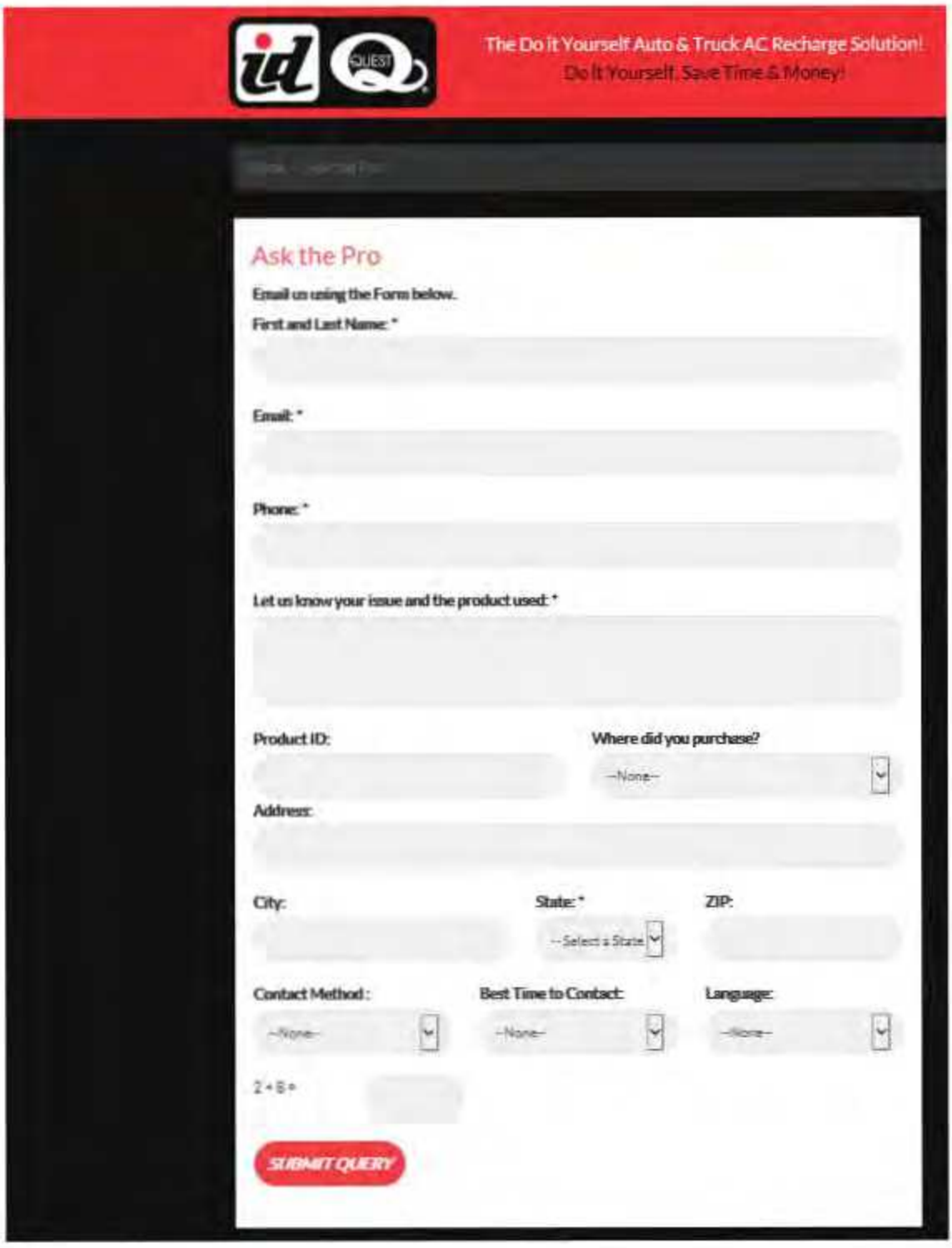
Product #

**Brief description of problem or question?** *

**Preferred Method of contact**

- Email
- Telephone

Submit reset


The Do it Yourself Auto & Truck AC Recharge Solution!
Do It Yourself, Save Time & Money!
Ask the Pro
Email us using the Form below.
First and Last Name: *
Email: *
Phone: *
Let us know your issue and the product used: *
Product ID:
Where did you purchase?
--None--
Address:
City:
State: *
--Select a State--
ZIP:
Contact Method:
--None--
Best Time to Contact:
--None--
Language:
--None--
2 + 6 =
SUBMIT QUERY

# EXHIBIT H

Before Using Product


LOCATE PORT


MEASURE


CHARGE

Scan Here for Instruction Video and More
Utilice este scan para conseguir
videos de instrucción y más

8 86345 00072 7

M1119

DOT SP 10232

If you have any questions or comments please contact us at:
Aerospace Communications
PO BOX 361786, Hoover, Al 35236
Toll free number:800-323-0197
E-mail:support@zhonghuico.com
Http://www.aerocousa.com

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Con
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# EXHIBIT I

lectura del medidor y compare con la carta de tempera
presión está por debajo de la lista del Medidor de Baja
SOLUCIÓN DE PROBLEMAS: Si el compresor no se e
producto, espere 3 minutos y puedes vuelva a intentarl
engancha se puede necesitar de reparaciones.

**3. CARGÁ:** Remueva el acoplador del puerto, sacuda l
gatillo. La lata no se encuentra perforada. No desatornil
encuentre vacía. Reconecte el acoplador rápido para re
gatillo para cargar. Rote la lata entre las 12 en punto y l
mientras la sacude continuamente. Libere el gatillo de m
presión del sistema, los sistemas A/C típicos se cargan a
encuentra en la zona azul. Cuando la lata está vacía, sos
minuto, para remover los contenidos sobrantes, antes de
¡NO SOBRECARGAR!

**PELIGRO:** NO ALMACENE LA LATA EN EL COMPARTIM
VEHÍCULO (PODRÍA EXPLOTAR). No almacenar en tem
Incinere lata.

**ADVERTENCIA:** Solo Para Sistemas Automotrices A/C 1
12 (R12). Mantenga fuera del alcance de los chicos: La ex
congelación. Limpie con agua fría. En caso de contacto co
caso de inhalación, tome aire fresco y contacte un médico
tetrafluoroetano (CAS # 811-97-2).

**PRECAUCIÓN:** SIEMPRE UTILICE GUANTES PROTECT
SIEMPRE ALMACENE LAS LATAS PARCIALMENTE LLEN
MANGUERA DE RECARGA CONECTADA EN UN LUGAR

BOT. VENT. PAT. NO. PENDING 5D1503 Lot #1986

JS 44 (Rev. 09/11)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

**I. (a) PLAINTIFFS**
IDQ Operating, Inc.

**(b)** County of Residence of First Listed Plaintiff Dallas County
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*
Michael E. Jones, Potter Minton, PC, 110 North College, Suite 500, Tyler, Texas 75702; 903-597-8311

**DEFENDANTS**
Aerospace Communications Holdings Co., Ltd.

County of Residence of First Listed Defendant _____
*(IN U.S. PLAINTIFF CASES ONLY)*
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

**II. BASIS OF JURISDICTION** *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

**III. CITIZENSHIP OF PRINCIPAL PARTIES** *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
*(For Diversity Cases Only)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ❒ 1 | ❒ 1 | Incorporated *or* Principal Place of Business In This State | ❒ 4 | ❒ 4 |
| Citizen of Another State | ❒ 2 | ❒ 2 | Incorporated *and* Principal Place of Business In Another State | ❒ 5 | ❒ 5 |
| Citizen or Subject of a Foreign Country | ❒ 3 | ❒ 3 | Foreign Nation | ❒ 6 | ❒ 6 |

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

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- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

**V. ORIGIN** *(Place an "X" in One Box Only)*
☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from another district *(specify)* ❒ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
35 USC Sec. 271; 15 USC Sec. 1114; 17 USC Sec. 501; 35 USC Sec. 292
Brief description of cause:
Patent Infringement; Trademark Infringement; Copyright Infringement; False Marking

**VII. REQUESTED IN COMPLAINT:**
❒ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23
**DEMAND $**
CHECK YES only if demanded in complaint:
**JURY DEMAND:** ☑ Yes ❒ No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*
JUDGE _____ DOCKET NUMBER _____

DATE
08/17/2015

SIGNATURE OF ATTORNEY OF RECORD
/s/ Allen F. Gardner

**FOR OFFICE USE ONLY**

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 120 (Rev. 08/10)

| TO: | REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK |
|---|---|
| **Mail Stop 8<br>Director of the U.S. Patent and Trademark Office<br>P.O. Box 1450<br>Alexandria, VA 22313-1450** | |

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Eastern District of Texas on the following

☐ Trademarks or ☑ Patents. ( ☑ the patent action involves 35 U.S.C. § 292.):

| DOCKET NO. | DATE FILED | U.S. DISTRICT COURT |
|---|---|---|
| 6:15cv781 | 8/17/2015 | Eastern District of Texas |

| PLAINTIFF | DEFENDANT |
|---|---|
| IDQ Operating, Inc. | Aerospace Communications Holdings Col, Ltd. |

| | PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
|---|---|---|---|
| 1 | 7,260,943 | 8/28/2007 | Interdynamics, Inc. |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

| DATE INCLUDED | INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading | |
|---|---|---|
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |

In the above—entitled case, the following decision has been rendered or judgement issued:

| DECISION/JUDGEMENT |
|---|
| |

| CLERK | (BY) DEPUTY CLERK | DATE |
|---|---|---|
| | | |

**Copy 1—Upon initiation of action, mail this copy to Director** **Copy 3—Upon termination of action, mail this copy to Director**
**Copy 2—Upon filing document adding patent(s), mail this copy to Director** **Copy 4—Case file copy**

AO 120 (Rev. 08/10)

| TO: | REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK |
|---|---|
| **Mail Stop 8<br>Director of the U.S. Patent and Trademark Office<br>P.O. Box 1450<br>Alexandria, VA 22313-1450** | |

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Eastern District of Texas on the following

☑ Trademarks or ☐ Patents. ( ☑ the patent action involves 35 U.S.C. § 292.):

| DOCKET NO. | DATE FILED | U.S. DISTRICT COURT |
|---|---|---|
| 6:15cv781 | 8/17/2015 | Eastern District of Texas |

| PLAINTIFF | DEFENDANT |
|---|---|
| IDQ Operating, Inc. | Aerospace Communications Holdings Col, Ltd. |

| | PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
|---|---|---|---|
| 1 | 4,244,354 | 11/20/2012 | IDQ Operating, Inc. |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

| DATE INCLUDED | INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading | |
|---|---|---|
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |

In the above—entitled case, the following decision has been rendered or judgement issued:

| DECISION/JUDGEMENT |
|---|
| |

| CLERK | (BY) DEPUTY CLERK | DATE |
|---|---|---|
| | | |

**Copy 1—Upon initiation of action, mail this copy to Director** **Copy 3—Upon termination of action, mail this copy to Director**
**Copy 2—Upon filing document adding patent(s), mail this copy to Director** **Copy 4—Case file copy**

AO 121 (6/90)

| TO: | |
|---|---|
| **Register of Copyrights**<br>**Copyright Office**<br>**Library of Congress**<br>**Washington, D.C. 20559** | **REPORT ON THE FILING OR DETERMINATION OF AN ACTION OR APPEAL REGARDING A COPYRIGHT** |

In compliance with the provisions of 17 U.S.C. 508, you are hereby advised that a court action or appeal has been filed on the following copyright(s):

| ☑ ACTION ☐ APPEAL | | COURT NAME AND LOCATION |
|---|---|---|
| DOCKET NO. | DATE FILED | United States District Court for the Eastern District of Texas, Tyler Division |
| 6:15-cv-781 | 8/17/2015 | |
| PLAINTIFF | | DEFENDANT |
| IDQ Operating, Inc. | | Aerospace Communications Holdings Co., Ltd. |

| | COPYRIGHT REGISTRATION NO. | TITLE OF WORK | AUTHOR OR WORK |
|---|---|---|---|
| 1 | 1-2634224422 | SUB-ZERO label | IDQ Operating, Inc. |
| 2 | 1-2634224351 | EZ CHILL label | IDQ Operating, Inc. |
| 3 | 1-2634224517 | Trans. for Video "How to Recharge Your Car AC..." | IDQ Operating, Inc. |
| 4 | 1-2640414141 | IDQUSA.COM website (2012 version) | IDQ Operating, Inc. |
| 5 | | | |

In the above-entitled case, the following copyright(s) have been included:

| DATE INCLUDED | INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading | |
|---|---|---|
| **COPYRIGHT REGISTRATION NO.** | **TITLE OF WORK** | **AUTHOR OF WORK** |
| 1 | | |
| 2 | | |
| 3 | | |

In the above-entitled case, a final decision was rendered on the date entered below. A copy of the order or judgment together with the written opinion, if any, of the court is attached.

| COPY ATTACHED | WRITTEN OPINION ATTACHED | DATE RENDERED |
|---|---|---|
| ☐ Order ☐ Judgment | ☐ Yes ☐ No | |

| CLERK | (BY) DEPUTY CLERK | DATE |
|---|---|---|
| | | |

**DISTRIBUTION:**

1) Upon initiation of action, mail copy to Register of Copyrights

2) Upon filing of document adding copyright(s), mail copy to Register of Copyrights

3) Upon termination of action, mail copy to Register of Copyrights

4) In the event of an appeal, forward copy to Appellate Court

5) Case File Copy

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

| | |
|---|---|
| IDQ OPERATING, INC.,<br><br>Plaintiff,<br><br>v.<br><br>AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.<br><br>Defendant. | C.A. No. 6:15-cv-781 |

**PLAINTIFF IDQ OPERATING, INC.'S JURY DEMAND**

Pursuant to Local Rule CV-38(a) and Federal Rule of Civil Procedure 38(b), Plaintiff IDQ Operating, Inc. hereby demands trial by jury of all issues so triable in this action.

Dated: August 17, 2015

Respectfully submitted by:

*/s/ Allen F. Gardner*
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**COUNSEL FOR PLAINTIFF IDQ OPERATING, INC.**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

IDQ OPERATING, INC.,

Plaintiff,

v.

AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.

Defendant.

C.A. No. 6:15-cv781

**PLAINTIFF IDQ OPERATING, INC.'S STATEMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 7.1**

Pursuant to Federal Rule of Civil Procedure 7.1, Plaintiff IDQ Operating, Inc. states that it is a nongovernmental corporate party wholly owned by Armored AutoGroup, Inc., which is a nongovernmental corporate party wholly owned by Spectrum Brands, Inc. Spectrum Brands, Inc. has no parent corporation, and no publicly held company owns 10% or more of the stock of Spectrum Brands, Inc.

Dated: August 17, 2015

Respectfully submitted by:

*/s/ Allen F. Gardner*

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marylee.jenkins@arentfox.com

**COUNSEL FOR PLAINTIFF**
**IDQ OPERATING, INC.**

# EXHIBIT 4

**From:** Lavenue, Lionel
**Sent:** Tuesday, November 17, 2015 1:58 PM
**To:** Anderson, Taniel; EXT- Janine.Carlan@arentfox.com
**Cc:** Zhu, Shaobin; Johns, Christopher; Specht, Kara
**Subject:** RE: IDQ Operating, Inc. v. Aerospace Communications Holdings, 6:15-cv-00781-JRG-KNM

Counsel for IDQ:

Your desperate and improper attempt today to serve me as counsel for ACH is ineffective.

Under the circumstances, you well know that service has *not* been properly accomplished - and that I do not accept the attempted service for ACH.

I have not entered a notice of appearance, and my forthcoming notice of appearance for ACH will be only by special appearance to contest service and other required tasks. The proper manner of service on ACH is via the Hauge Convention. IDQ should avail itself of the proper manner of service.

Finally, please provide the positions of IDQ on the 3 items noted below. We kindly request a prompt response.

Regards,

Lionel

# Exhibit C

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

IDQ OPERATING, INC.,

Plaintiff,

v.

AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.

Defendant.

C.A. No. 6:15-cv-781-JRG-KNM

**PLAINTIFF'S MOTION FOR EXTENSION OF TIME**
**FOR SERVICE OF PROCESS**

IDQ is mindful that Federal Rule 4(m) requires service of process within 120 days of filing the complaint.[1] But IDQ respectfully submits that Rule 4(m) does not apply here because (1) IDQ has already properly served ACH, and (2) Rule 4(m) excludes service upon foreign defendants, like ACH. If, however, this Court grants ACH's motion to quash ***and*** concludes that time limits of Rule 4(m) apply, IDQ respectfully requests an extension of 120 days to complete service of process upon ACH.

## I. RULE 4(m) DOES NOT APPLY

IDQ had already properly served ACH—not once, but twice. *See* Dkt. # 26. Despite this, ACH insists on additional service through the Hague Convention. But "if domestic service on a foreign corporation were effected properly, the Hague Convention would not require additional, international service." *Glencore Ltd. v. Occidental Arg. Exploration & Prod., Inc.*, No. H-11-3070, 2012 WL 591226, at *3 (S.D. Tex. Feb. 22, 2012) (citing *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988)). Therefore, because IDQ already properly served ACH with the complaint, Rule 4(m) does not apply.

Even if IDQ must still serve under the Hague Convention, Rule 4(m) still does not apply. Defendant ACH is a Chinese corporation, and Rule 4(m) expressly recognizes that additional time is necessary to serve foreign defendants, providing that "[t]his subdivision (m) does not apply to service in a foreign country under Rule 4(f) or (4)(j)(1)." Fed. R. Civ. P. 4(m). Subdivision (f), in turn, specifies the method of service upon individuals in foreign countries (including via the Hague Convention). *See* Fed. R. Civ. P. 4(f). Finally, subdivision (h), which applies to service on "a domestic or foreign corporation," expressly allows service "in any manner prescribed by Rule 4(f) for serving an individual." Fed. R. Civ. P. 4(h). Therefore, the

[1] On December 1, 2015, Rule 4(m) was amended to shorten the period from 120 days to 90 days. Because the complaint was filed on August 17, 2015, the shorter period does not apply here.

limits of Rule 4(m) do not apply to service on foreign corporations like ACH.

This is confirmed in cases interpreting Rule 4(m), where "courts have consistently recognized that the 120-day time limit does not apply to service in foreign countries of individual ***or corporate defendants***." *Flock v. Scripto-Tokai Corp.*, No. Civ. A.H. 00-3794, 2001 WL 34111630, at *5 (S.D. Tex. July 23, 2001) (emphasis added). Indeed, "[t]he exclusion of service in a foreign country from the 120 day limit is reasonable, and helps to counterbalance the complex and time-consuming nature of foreign service of process." *Kim v. Frank Mohn A/S*, 909 F. Supp. 474, 480 (S.D. Tex. 1995) (citation omitted). A similar conclusion is especially appropriate here, where service upon ACH in China through the Hague Convention will take months to complete. *See* Dkt. # 26 at 9 n.2. Consequently, Rule 4(m) does not apply here. *See Flock*, 2001 WL 34111630, at *5 ("Thus, because Defendants . . . are all residents of foreign countries, it was not necessary for Plaintiffs to effect service of process on them within 120 days after filing the complaint.").

## II. IF RULE 4(m) APPLIES, GOOD CAUSE EXISTS FOR AN EXTENSION

Should this Court conclude that IDQ must re-serve ACH under the Hague Convention ***and*** that Rule 4(m) applies, IDQ respectfully submits that good cause exists to warrant an extension of time to complete service.

IDQ filed its complaint against ACH on August 17, 2015. *See* Dkt. # 1. That same month, IDQ began the process of serving ACH under the Hague Convention. *See* Carlan Decl. ¶ 3 (Dkt. # 26-2). On November 3, 2015 (78 days after filing the complaint), ACH served IDQ's authorized representative in Las Vegas. *See* Dkt. # 10. On November 17, 2015 (92 days after filing the complaint), ACH again served IDQ through its U.S. outside counsel. *See* Dkt. # 13-5. Before and after service, IDQ engaged in good-faith negotiations with ACH's counsel regarding accepting service of the complaint. *See* Dkt. # 26-2 ¶¶ 6–7.

"[T]he plain language of rule 4(m) broadens a district court's discretion by allowing it to extend the time for service even when a plaintiff fails to show good cause." *Thompson v. Brown*, 91 F.3d 20, 21 (5th Cir. 1996) (citations omitted). Here, good cause exists here because IDQ has diligently tried to serve ACH through multiple means, and any alleged delay in effecting service is not being caused by IDQ. *See Carimi v. Royal Carribean Cruise Line, Inc.*, 959 F.2d 1344, 1348–49 (5th Cir. 1992) (allowing additional time to reattempt service where plaintiff acted in good faith and believed he had properly served defendant); *Kim*, 909 F. Supp. at 480 n.5 (finding good cause for extension of time where plaintiff did not serve foreign defendant under the Hague Convention within 120 days, but "believed in good faith he had properly served the Defendant under the long-arm statute"). Here, because service under the Hague Convention will take months complete (*see* Dkt. No. 26 at 9 n.2), IDQ respectfully requests that if the Court deems it necessary, IDQ be given an extension of 120 days to complete service.

## III. CONCLUSION

Because IDQ has already properly served ACH, and because ACH is a foreign corporation, Rule 4(m) does not apply. Yet, out of an abundance of caution, if this Court concludes that Rule 4(m) applies and also finds that IDQ must serve ACH under the Hague Convention, IDQ respectfully request that it be granted an extension of 120 days up to and including April 13, 2016, to complete service.

Dated: December 15, 2015

Respectfully submitted,

*/s/Allen F. Gardner*
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*Counsel for IDQ Operating, Inc.*

**CERTIFICATE OF CONFERENCE**

The Parties have complied with Local Rule CV-7(h). Counsel for both IDQ and ACH met and conferred via telephone on December 15, 2015. ACH indicated that it will not oppose this motion if IDQ proceeds with service under the Hague Convention, but will oppose this motion if IDQ proceeds with other methods of service.

*/s/Allen F. Gardner*

# Exhibit D

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

| | | |
|---|---|---|
| IDQ OPERATING, INC., | ) | |
| | ) | Case No. 6:15-cv-00781-JRG-KNM |
| Plaintiff, | ) | |
| | ) | **JURY TRIAL DEMANDED** |
| vs. | ) | |
| | ) | **ORAL ARGUMENT** |
| AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD., | ) | **REQUESTED** |
| | ) | |
| Defendant. | ) | |

**DEFENDANT AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO TRANSFER TO THE NORTHERN DISTRICT OF ALABAMA**

TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### CASES

**STATUTES AND OTHER AUTHORITY**

## I. INTRODUCTION: THIS CASE SHOULD BE DISMISSED BECAUSE ACH HAS NOT BEEN SERVED, IS NOT SUBJECT TO JURISDICTION HERE, AND HAS SUED IN THE WRONG VENUE; ALTERNATIVELY, THIS CASE SHOULD BE TRANSFERRED - THIS CASE BELONGS, IF ANYWHERE, IN ALABAMA.

This case does not belong in the Eastern District of Texas (EDTX) for four reasons: (1) ACH has not been served, (2) ACH is not subject to personal jurisdiction in this District, (3) venue is improper, and (4) the Northern District of Alabama (NDAL) is more convenient. For each of these reasons, this case should be dismissed, or alternatively, transferred to the NDAL.

First, as outlined in the Defendant's pending Motion to Quash and (and Reply), ACH has still yet to be properly served. *See* dkt. 13, 27. Instead, IDQ has attempted two ineffective service schemes without abiding by the Hague Convention, which is required for proper service of ACH.

Second, ACH is not subject to personal jurisdiction in the EDTX, as ACH does not have *any*, much less "minimum contacts," with this District. In this District, ACH has no business presence, employs no workers, maintains no addresses or telephone lines, and directly sells no products in the EDTX. IDQ alleges that the mere presence of ACH's accused products within the forum is sufficient to support personal jurisdiction (Dkt. 1 at ¶ 6), but the law in this Circuit is settled that even knowledge that "a product will eventually end up in a particular state—*even if that belief amounts to a substantial certainty*—does not, by itself, amount to purposeful conduct" to satisfy the minimum contacts requirement. *Freescale Semiconductor, Inc. v. Amtran Tech. Co., Ltd.*, 2014 WL 1603665, at *6 (W.D. Tex. Mar. 19, 2014) (cites omitted).

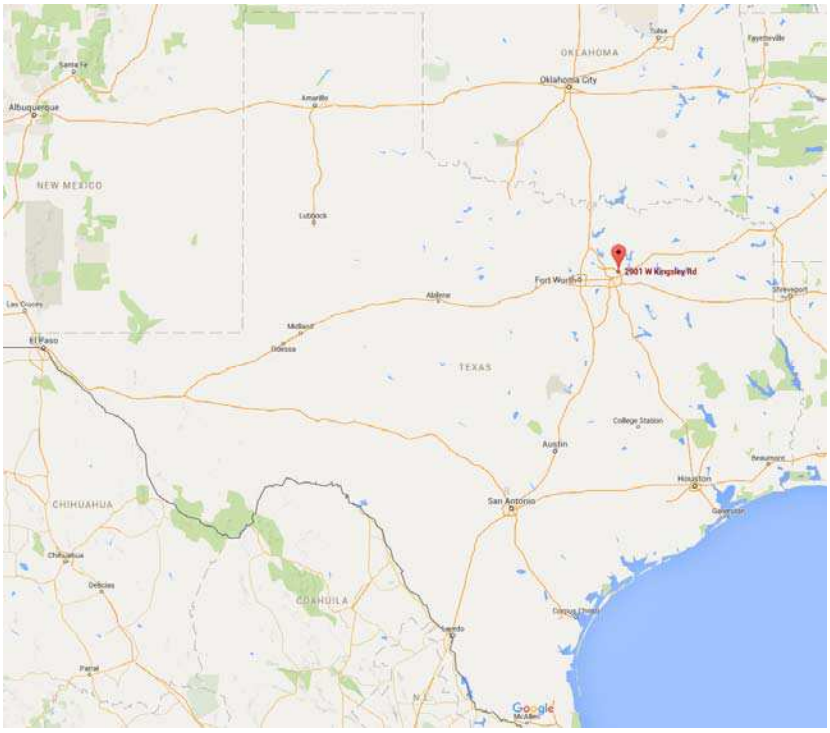
Third, the EDTX is not a proper venue for this dispute, because neither Plaintiff IDQ nor Defendant ACH is located in the EDTX. There is nothing to connect ACH to this District. ACH does not reside or conduct business here, and ACH is not subject to personal jurisdiction in Texas. This case has no connection with the EDTX whatsoever, but rather has strong ties, via (1) product manufacturers, (2) P.O. Box address, and (3) contractor presence, in the NDAL.

Fourth, even if this Court does not find dismissal improper for lack of service, lack of jurisdiction, or improper venue, this case should be transferred to the NDAL, which is the proper and more convenient forum. For example, the cans used in the allegedly infringing products are manufactured in the NDAL, third-parties that will be subject to discovery are located in the NDAL, and the NDAL is significantly less congested than the EDTX. Therefore, should this Court decide dismissal is not a proper remedy here, the case should be transferred to the NDAL.

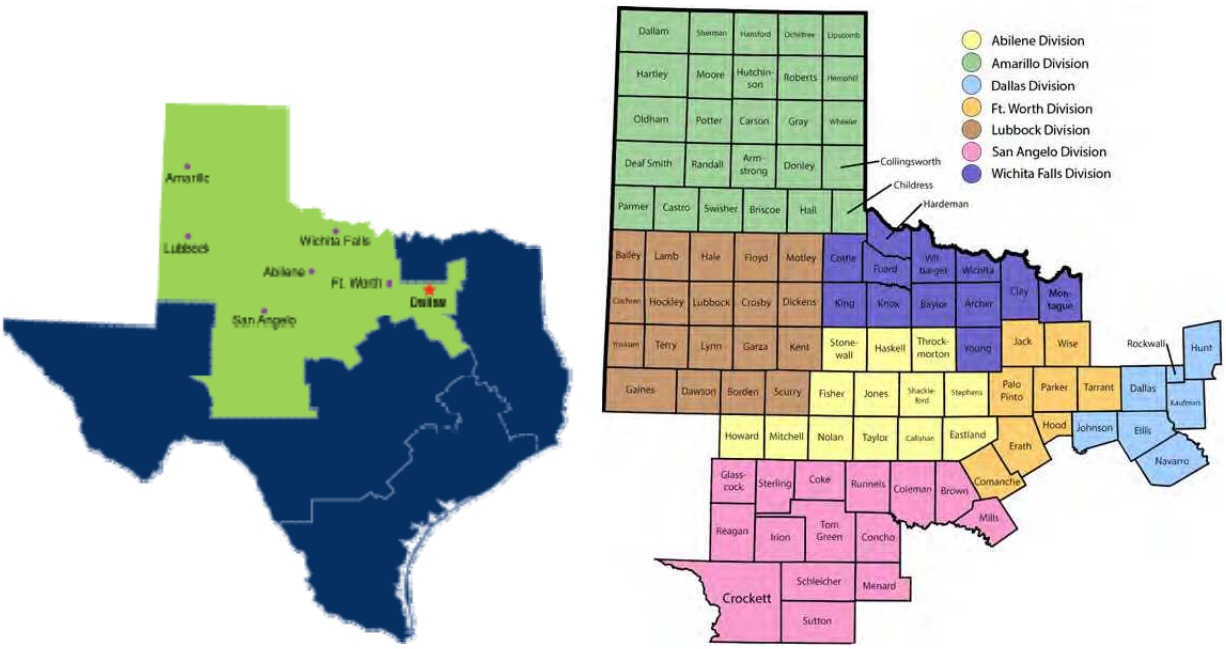
## II. FACTS: ACH HAS NOT BEEN SERVED; THE PARTIES HAVE NO CONNECTION TO THE EDTX; ACH HAS NO U.S. PRESENCE IN THE EDTX.

### A. THE EDTX IS NOT IDQ'S "HOME FORUM"

Plaintiff IDQ has absolutely no presence or connection to the Eastern District of Texas. Instead, IDQ is a New York corporation with its principal place of business at 2901 West Kingsley Road, Garland, Texas 75041. Dkt. 1 at ¶1. This location is in the Northern District of Texas, just outside of the Dallas/Fort Worth metropolitan area, right within Dallas County.



As shown in the maps above and below, the address for Plaintiff IDQ is in the Northern District of Texas – indeed, all of Dallas County is in the Northern District, not Eastern District.




Further, IDQ manufactures its "All-in-One" products, including the refrigerant kits A/C PRO® and ARCTIC FREEZE®, which allegedly embody the asserted patents, at a facility in Garland, Texas (in the Northern District, not the Eastern District). Dkt. 1 at ¶¶12, 21. IDQ also stores its manufactured products at a warehouse near this facility, also in Garland, Texas (in the Northern District, not the Eastern District). *Id.* Specifically, Dallas County tax records confirm that IDQ's address at 2901 W. Kingsley Road, Garland, Texas is located in Dallas County, which, as shown in the figure above, is within the Northern District. Ex. 1. ACH finds no presence of IDQ in this District. Accordingly, unless IDQ has some presence in the District that is unknown to ACH, it seems clear that IDQ has no legitimate basis to claim that the Eastern District of Texas is its home forum, as it has no facilities within the Eastern District of Texas, but it rather has substantial connection to the Northern District.

### B. ACH HAS NO PRESENCE IN THE U.S. AND NO CONNECTION TO TEXAS - AND CERTAINLY NONE IN THIS DISTRICT; BUT, ACH HAS CONNECTIONS TO THE NORTHERN DISTRICT OF ALABAMA

Defendant ACH is a Chinese company with 21 locations around China, but ACH has no headquarters or offices in the United States. Further, ACH has no locations in the EDTX and employs no workers in the EDTX. Indeed, ACH: is not registered, authorized, or qualified to do business in Texas; is not required to and does not maintain any registered agents in Texas; does not own, lease, or rent any property in Texas; does not maintain any offices, facilities, or other places of business in Texas; does not manufacture products in Texas; does not store any records in Texas; has not paid taxes in Texas; does not maintain bank accounts in Texas; and does not market any products to the residents of Texas. Gao Dec. at ¶ 7. In short, ACH has no connection to Texas or this District. ACH does, however, maintain a post office box and employs James Lee Brennard, a marketing contractor, within the Northern District of Alabama. *Id.* at ¶¶ 8-9.

Although ACH has no business presence in the United States, it maintains a P.O. Box in Alabama. *Id.* at ¶ 8. ACH's P.O. Box is located at: P.O. Box 361786, Hoover Alabama 35236. *Id.* This is in the Northern District of Alabama. IDQ alleges that there is no such P.O. Box (Dkt. 1 at ¶ 59), but ACH employs a marketing contractor, James Lee Brennard who resides at 609 Restoration Drive, Hoover, Alabama 35226, which is also in the Northern District of Alabama, who monitors and maintains the P.O. Box in Hoover, Alabama. Gao Dec. at ¶ 9; Brennard Dec. at ¶¶ 5-6. Mr. Brennard redirects customer correspondence letters received at the P.O. Box to the ACH headquarters in China for responses, as necessary. Brennard Dec. at ¶ 6. Accordingly, although ACH has no connection to the EDTX, it does have certain connections to the NDAL.

### C. THE ACCUSED PRODUCTS HAVE NO CONNECTION TO THE EDTX BUT HAVE TIES TO THE NORTHERN DISTRICT OF ALABAMA

IDQ alleges that "Defendant offers its Products for sale in the United States to one or more retailers, who in turn sell those products in [the EDTX]." Dkt. 1 at ¶ 24. IDQ goes on to allege that "Defendant's AeroCool R-134a Product can be purchased in [the EDTX], in at least, the Tyler Walmart Supercenter." *Id.* But, ACH offers its products for sale in the United States to third-party Wal-Mart, and ACH does not direct sales into the Eastern District of Texas. Further, ACH does not have any control or knowledge of the specific retail locations that sell its products. ACH simply sells the accused products to Wal-Mart, and then, Wal-Mart sells those products to consumers at its retail stores (Wal-Mart is based in Arkansas, not in Texas or in this District).

The accused products simply have no connection at all to the EDTX. Instead, the accused products have a connection to the Northern District of Alabama, as the R-134a refrigerant can for the accused product is manufactured by a third party in the Northern District of Alabama, a company called ITW Sexton. Gao Dec. at ¶ 11. To produce the accused product, ACH uses information and experience with refrigerant products to develop, market, and sell the R-134a product in the United States, but ACH itself does not make any of the accused products *per se*. Instead, ACH makes use of factories for the different components and combines the components. For example, ACH purchases cans directly from can manufacturer ITW Sexton located at 3101 Sexton Road, Decatur, Alabama 35603-1453. *Id.* ACH then ships the cans from Alabama to China for processing. ITW Sexton produces all cans used for the R-134a refrigerant at its location in Decatur, Alabama, and neither the cans nor any other portion of the accused products are made in Texas. Accordingly, sales of the accused product are not unique to the EDTX, and the accused product is not made in Texas.

In the Complaint, IDQ also bring claims of "false patent marking" against ACH. *See* Dkt. 1 at ¶¶ 79-83. But, ACH is not wrongly including patent markings on its product. Rather, ITW Sexton, which produces all cans used for the accused R-134a refrigerant product, is responsible for the patent marking on the cans, *not* ACH. The cans are labeled with the appropriate marking during production, and before they are even purchased by ACH, the patent markings are set. Therefore, as marking for ITW Sexton is a key part of the case, Alabama is central to the case. (In the photos below, the disputed patent marking on the accused ACH product is indicated by a red box.)



Indeed, the issue of patent marking will rely heavily on evidence and witnesses from ITW Sexton, which is located in Alabama. Thus, the accused product has no connection to EDTX, but has strong connections to the NDAL where the can manufacturer, ITW Sexton, is located.

### D. ALL SERVICE ATTEMPTS ON ACH WERE INEFFECTIVE

As described in detail in ACH's Motion to Quash Service of the Complaint (and Reply brief), IDQ has made two service attempts on ACH, both of which were ineffective. *See* Dkt. 13, 27. ACH's Motion to Quash Service asks this Court to quash the improper service on ACH.

## III. LEGAL STANDARDS—SERVICE, PERSONAL JURISDICTION, AND VENUE

### A. PERSONAL SERVICE MUST BE ON AN AUTHORIZED AGENT OF THE CORPORATION; OTHERWISE, ABSENT PERSONAL SERVICE, A FOREIGN ENTITY IS ENTITLED TO SERVICE VIA THE HAGUE

As described in ACH's Motion to Quash Service of the Complaint (and Reply), (1) service must be on an "authorized agent" of a corporation, (2) a foreign Corporations may insist on service via the Hague Convention, (3) ACH has not been personally served by IDQ, and (4) service on counsel not of record for a foreign defendant is improper. *Id.* Notably, the basis for ACH's motion to dismiss for insufficient service of process is the same as ACH's Motion to Quash.

### B. PERSONAL JURISDICTION REQUIRES "MINIMUM CONTACTS" IN THE FORUM STATE; MINIMUM CONTACTS REQUIRES CONTACTS

In patent cases, personal jurisdiction intimately relates to patent law, and Federal Circuit law governs the issue. *Silent Drive, Inc. v. Strong Indus., Inc.*, 326 F.3d 1194, 1201 (Fed. Cir. 2003). The burden of establishing a *prima facie* showing of personal jurisdiction is on the plaintiff. *Elecs. for Imaging, Inc. v. Coyle*, 340 F.3d 1344, 1349 (Fed. Cir. 2003).

#### 1. For Purposes of Personal Jurisdiction, the Texas Long Arm Statute Reaches Non-Residents that Are Actually Doing Business in Texas

A plaintiff must establish (1) personal jurisdiction under Texas's long-arm statute and (2) that the exercise of personal jurisdiction comports with due process. *3D Sys., Inc. v. Aarotech Labs., Inc.*, 160 F.3d 1373, 1376-77 (Fed. Cir. 1998). The Texas long-arm statute authorizes the exercise of jurisdiction over non-residents "doing business" in Texas. *Gundle Lining Const.*

*Corp. v. Adams Cty. Asphalt, Inc.*, 85 F.3d 201, 204 (5th Cir. 1996) (citing Tex. Civ. Prac. & Rem. Code § 17.042). The Texas Supreme Court has interpreted the "doing business" requirement broadly, allowing the long-arm statute to reach as far as the Constitution permits. *Id.* (citing *Schlobohm v. Schapiro*, 784 S.W.2d 355, 357 (Tex. 1990)). Thus, the two-step inquiry is actually a single, federal due process analysis, since the Texas Long-Arm statute and the Constitution are commensurate in scope, to determine if the defendant is subject to general or specific jurisdiction within the bounds of due process. *Johnston v. Multidata Sys. Int'l Corp.*, 523 F.3d 602, 609 (5th Cir. 2008) ("Because the Texas long-arm statute extends to the limits of federal due process, the two-step inquiry collapses into one federal due process analysis.") (citations omitted).

**2. Personal Jurisdiction Limited to "Within the Bounds of Due Process"**

A court's exercise of personal jurisdiction over a non-resident defendant comports with the constitutional due process requirements when (1) the defendant "purposefully availed" itself of the benefits and protections of the forum state by establishing "minimum contacts" with that state and (2) the exercise of personal jurisdiction does not offend traditional notions of "fair play and substantial justice." *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 481 F.3d 309, 311 (5th Cir. 2007) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Both prongs must be satisfied for a court to exercise personal jurisdiction over the defendant. *Johnston*, 523 F.3d at 609.

The "minimum contacts" prong is further subdivided into contacts that confer "general jurisdiction" and those that confer "specific jurisdiction." General jurisdiction exists "when a non-resident defendant's contacts with the forum state are substantial, continuous, and systematic." *Johnston*, 532 F.3d at 609 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414–19 (1984)). The defendant's contacts with the forum state are evaluated

"over a reasonable number of years, up to the date the lawsuit was filed." *Id.* at 610 (quoting *Access Telecom, Inc. v. MCI Telecommunications Corp.*, 197 F.3d 694, 717 (5th Cir. 1999)). But, the contacts at issue must be considered together, rather than in isolation from one another. *Id.*

**a. Purposeful Availment Requires Minimum Contacts in Texas**

Due process requires that to subject a defendant to the judicial power of a forum state, the defendant must have sufficient "minimum contacts" with the forum "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). As a general matter, the sovereign's exercise of judicial power requires "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefit and protections of its laws." *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2787 (2011) (plurality opinion) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). "This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts." *In re Chinese Manufactured Drywall Prods. Liab. Litig.*, 742 F.3d 576, 588 (5th Cir. 2014) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

**b. As to "Minimum Contacts," General Jurisdiction Requires "Continuous and Systematic" Contact With the Forum State**

General personal jurisdiction "requires that the defendant have 'continuous and systematic' contacts with the forum state and confers personal jurisdiction even when the cause of action has no relationship with those contacts." *Silent Drive*, 326 F.3d at 1200 (Fed. Cir. 2003). When general jurisdiction exists, the forum state may exercise jurisdiction over the defendant on any matter, even if the matter is unrelated to the defendant's contacts with the

forum. See *Johnston*, 532 F.3d at 613. But, for "continuous and systematic" contacts, this Court has held that, "[b]ecause general jurisdiction exposes the defendant to suit on any claim, regardless of the place of its origin, the minimum contacts required to establish general jurisdiction must satisfy 'an exacting standard' that 'approximate[s] physical presence' in the forum state." *Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.*, 66 F.Supp.3d 795, 803 (E.D. Tex. 2014) (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (holding that minimum contacts standard for general jurisdiction is high "because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.").

**c. As to Minimum Contacts," Specific Jurisdiction Requires Purposeful Availment and an Expectation that Items in the Stream of Commerce Will End Up in the Forum State**

When a plaintiff asserts specific jurisdiction over a non-resident defendant, the Court must determine "(1) whether the defendant purposefully directs activities at the forum's residents; (2) whether the claim arises out of or relates to those activities; and (3) whether assertion of personal jurisdiction is reasonable and fair." *AFTG-TG, LLC v. Nuvoton Tech. Corp.*, 689 F.3d 1358, 1361 (Fed. Cir. 2012). Generally "suffering harm" in Texas is insufficient to establish specific jurisdiction in Texas. *Revell v. Lidov*, 317 F.3d 467, 473 n. 41 (5th Cir. 2002). Rather, the focus of the specific jurisdiction inquiry is on "the relationship between the defendant, the forum, and the litigation." *Freudensprung v. Offshore Tech. Servs., Inc.*, 379 F.3d 327, 343 (5th Cir. 2004) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985)). Random, fortuitous, or attenuated contacts" do not satisfy the minimum contacts required for specific jurisdiction. *Moncrief*, 481 F.3d at 312.

One particular route to specific jurisdiction is the stream of commerce test. The case of *Beverly Hills Fan* clarifies that Federal Circuit law applies when deciding whether jurisdiction

based on stream of commerce is proper, but the Federal Circuit has declined to choose one of the two tests set forth in *Asahi Metal Indus. Co. v. Superior Court of Calif.*, 480 U.S. 102 (1987). *See Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558 (Fed. Cir. 1994). There are two possible stream of commerce tests: first, there is Justice O'Connor's more stringent "stream of commerce plus" test, and second, there is Justice Brennan's "foreseeability" test. As in *Beverly Hills Fan*, the Federal Circuit has only found jurisdiction proper under the stream of commerce framework when *both of these tests* are satisfied. *Beverly Hills Fan*, 21 F.3d at 1566 ("When viewed in light of the allegations and the controverted assertions in the affidavits, plaintiff has stated all of the necessary ingredients for an exercise of jurisdiction consonant with due process: defendants, acting in consort, placed the accused product in the stream of commerce, they knew the likely destination of the products, and their conduct and connections with the forum state were such that they should reasonably have anticipated being brought into court here.").

Indeed, courts applying *Beverly Hills Fan* have indicated that this merged "stream of commerce plus" standard requires that "(1) the alien defendant placed the accused product into the stream of commerce, (2) the alien defendant knew or should have known the likely destination of the product, and (3) the alien defendant's conduct and connections with the forum state are such that it may reasonably foresee being haled into court within that forum." *Celgard, LLC v. SK Innovation Co., Ltd.*, 2014 WL 5430993, at *3 (W.D.N.C., Aug. 29, 2014) (citing *Beverly Hills Fan*, 21 F.3d at 1564-65); *see also Cree, Inc. v. Bridgelux, Inc.*, No. 1:06-CV-00761, 2007 WL 3010532, at * 6 (M.D.N.C. July 5, 2007) (declining to exercise personal jurisdiction over a "component manufacturer [d]efendant . . . on the sole basis that an item is found [in the forum state] which incorporates [d]efendant's product"). Further, courts in Texas have also held that "[a] rational belief that a component or product will eventually end up in a

particular state—even if that belief amounts to a substantial certainty—does not, by itself, amount to purposeful conduct nor 'manifest an intention to submit to the power of a sovereign.'" *Freescale Semiconductor*, 2014 WL 1603665 at *6 (quoting *J. McIntyre Mach., Ltd.*, 131 S. Ct. at 2788).

### C. VENUE IS PROPER WHERE DEFENDANT RESIDES, WHERE DEFENDANT HAS COMMITTED ACTS OF INFRINGEMENT, OR WHERE DEFENDANT IS SUBJECT TO PERSONAL JURISDICTION

Venue in patent infringement actions is controlled exclusively by 28 U.S.C. § 1400(b), and venue is proper under Section 1400(b) in (1) "the judicial district where the defendant resides" or (2) "where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b) (2015). Under 28 U.S.C. § 1391(c), a corporate defendant in a patent infringement suit resides where personal jurisdiction exists at the time of the suit. *See VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1583 (Fed. Cir. 1990).

### D. TRANSFER FROM ONE FORUM TO ANOTHER IS APPROPRIATE UNDER SECTION 1404(A) WHEN THE PUBLIC AND PRIVATE INTEREST FACTORS INDICATE A MORE CONVENIENT FORUM

In analyzing transfer from one forum to another, Section 1404(a) provides that, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a) (2006). The first inquiry in analyzing eligibility for transfer is "whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*In re Volkswagen I*").

Once that threshold is met (that is, if transfer is sought to a district in which the claim could have been filed), courts analyze both public and private factors relating to the convenience of parties and witnesses as well as the interests of particular venues in hearing the case. *See*

*Humble Oil & Ref. Co. v. Bell Marine Serv., Inc.*, 321 F.2d 53, 56 (5th Cir. 1963); *In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009); *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). Although the private and public factors apply to most transfer cases, "they are not necessarily exhaustive or exclusive," and no single factor is dispositive. *In re Volkswagen of America*, 545 F.3d, 304, 314-15 (5th Cir. 2008) (hereinafter "*Volkswagen II*").

**1. For Case Transfer, the Private Interest Factors**

In the second inquiry for the Section 1404(a) transfer analysis, the private factors are: 1) the relative ease of access to sources of proof; 2) the availability of compulsory process to secure the attendance of witnesses; 3) the cost of attendance for willing witnesses; and 4) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *In re Volkswagen I*, 371 F.3d at 203; *In re Nintendo*, 589 F.3d at 1198; *In re TS Tech*, 551 F.3d at 1319.

**2. For Case Transfer, the Public Interest Factors**

In the second inquiry for the Section 1404(a) transfer analysis, the public factors are: 1) the administrative difficulties flowing from court congestion; 2) the local interest in having localized interests decided at home; 3) the familiarity of the forum with the law that will govern the case; and 4) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. *In re Volkswagen I*, 371 F.3d at 203; *In re Nintendo*, 589 F.3d at 1198.

## IV. THIS CASE SHOULD BE DISMISSED UNDER ANY OF (1) RULE 12(B)(5) FOR INSUFFICIENT SERVICE OF PROCESS, (2) RULE 12(b)(2) FOR LACK OF PERSONAL JURISDICTION, AND/OR (3) RULE 12(b)(3) FOR IMPROPER VENUE

ACH seeks dismissal under Rule 12 for three independent grounds, including (1) dismissal under Rule 12(b)(5) for insufficient service of process, (2) dismissal under Rule 12(b)(2) for lack of personal jurisdiction, and 3) dismissal under Rule 12(b)(3) for improper

venue. Notably, each and all of these bases for dismissal are appropriate in this case, as noted below.

## V. DISMISSAL IS PROPER UNDER 12(B)(5) FOR INSUFFICIENT SERVICE OF PROCESS

As explained in detail in ACH's Motion to Quash Service of the Complaint and supporting Reply, IDQ has not served ACH. The alleged trade show "service" was not on an authorized agent of the company, and therefore, it was ineffective. *See* Dkt. 13, 27. As further explained in ACH's Motion to Quash Service of the Complaint and supporting Reply, IDQ's service on counsel for ACH was also ineffective. *See id.* As IDQ has had ample time to properly effectuate service, and has chosen not to do so, but instead made two ineffective attempts, this case should be dismissed under Rule 12(b)(5) for insufficient service of process.

## VI. DISMISSAL IS PROPER UNDER RULE 12(b)(2) FOR IDQ'S FAILURE TO DEMONSTRATE PERSONAL JURISDICTION OVER ACH IN THIS DISTRICT

ACH does not have the necessary "minimum contacts" with Texas for this Court to exercise personal jurisdiction over ACH in this District. Therefore, there is neither "general jurisdiction" nor "specific jurisdiction" over ACH in Texas, as ACH has no contacts with Texas.

### A. ACH IS NOT SUBJECT TO GENERAL JURISDICTION

General jurisdiction "requires that the defendant have 'continuous and systematic' contacts with the forum state." *Silent Drive*, 326 F.3d at 1200 (Fed. Cir. 2003). Because ACH has no place of business in the EDTX, because ACH employs no employees in the EDTX, and sells products only through a nationwide third-party superstore, Wal-Mart, and because ACH has no specific knowledge of the locations of sales in Texas, IDQ cannot reasonably argue that ACH has "continuous and systematic" contacts in Texas that satisfy this high standard. Indeed, ACH has no contacts in Texas, so there can be no general jurisdiction. Gao Dec. at ¶13.

### B. ACH IS NOT SUBJECT TO SPECIFIC JURISDICTION

Under *Beverly Hills Fan* and *AFTG-TG*, ACH is not subject to specific jurisdiction. Both *AFTG-TG* and *Beverly Hills Fan* apply the well-known three-prong test for specific jurisdiction: "(1) whether the defendant purposefully directs activities at the forum's residents; (2) whether the claim arises out of or relates to those activities; and (3) whether assertion of personal jurisdiction is reasonable and fair." *AFTG-TG, LLC*, 689 F.3d at 1361 (Fed. Cir. 2012); *see also Beverly Hills Fan*, 21 F.3d at 1568 (Fed. Cir. 1994). Applying this three-prong test here, it is clear that there is no specific jurisdiction over ACH in this District (or even in Texas).

#### 1. Under the First Prong for Specific Jurisdiction, ACH Has not "Purposefully Directed Activities at the EDTX's Residents"

According to *Beverly Hills Fan* and its progeny, "[a] defendant corporation purposefully directs its activities at a state if that corporation delivers its products into the stream of commerce *with the expectation* that they will be purchased by consumers in that state." *LG Elecs. Inc., v. Asustek Computers*, 126 F. Supp. 2d 414, 419 (E.D. Va. 2000) (emphasis added). Here, as outlined above, ACH does not direct any activity at all towards this District (or even to Texas).

Plainly, ACH *does not* conduct business in Texas. ACH has directed no activities specifically at the residents of the Eastern District of Texas. It has no business location in Texas, and it designs no products specifically for the Texas market. In fact, ACH: is not registered, authorized, or qualified to do business in Texas; is not required to and does not maintain any registered agents in Texas; does not own, lease, or rent any property in Texas; does not maintain any offices, facilities, or other places of business in Texas; does not manufacture products in Texas; does not store any records in Texas; has not paid any taxes in Texas; does not maintain any bank accounts in Texas; and does not market any products to the residents of Texas.

Although IDQ alleges that it purchased the accused AeroCool R-134a product at the Tyler Walmart Supercenter located at 6801 S. Broadway Ave., Tyler Texas, 75703, ACH did not sell that product directly to that retail location. Rather, ACH sells its products wholesale to Walmart, headquartered in Bentonville, Arkansas. From there, Walmart has the sole responsibility for distributing the product to specific Wal-Mart stores nationwide. Even if ACH knew that Wal-Mart had locations in Texas that would likely stock the product, that would be insufficient as "[a] rational belief that a component or product will eventually end up in a particular state—*even if that belief amounts to a substantial certainty*—does not, by itself, amount to purposeful conduct nor 'manifest an intention to submit to the power of a sovereign.'" *Freescale Semiconductor, Inc.*, 2014 WL 1603665, at *6 (W.D. Tex. Mar. 19, 2014) (quoting *J. McIntyre Mach., Ltd.,* 131 S. Ct. at 2788 (2012)).

Thus, the first prong for specific jurisdiction is not satisfied.

**2. Under the Second Prong for Specific Jurisdiction, the Claims Against ACH Do Not Arise From Activities Related Specifically to the EDTX**

ACH has no activities directed specifically to the forum. Rather, any activities by ACH within the forum, such as activities that give rise to ACH's products being sold within the forum, are merely incidental, and IDQ has not alleged otherwise. Instead, IDQ's complaint focuses on the harm it has suffered within the forum, focusing on the purchase of the allegedly infringing product within the forum state. Dkt. 1 at ¶ 24. But suffering harm in Texas is insufficient to establish specific jurisdiction. *Revell*, 317 F.3d at 473 n. 41 (5th Cir. 2002).

The focus of the specific jurisdiction inquiry is on "the relationship between the defendant, the forum, and the litigation." *Freudensprung*, 379 F.3d at 343 (quoting *Burger King Corp.*, 471 U.S. at 474 (1985)). In this case, ACH conducts no activities within the forum, and ACH has no relation to the forum. Indeed, this litigation itself has no relation to the forum, other

than the mere fact that ACH's product is sold by a third-party, Wal-Mart, in a retail location within the forum. As the Federal Circuit has noted, "[r]andom, fortuitous, or attenuated contacts" do not satisfy the minimum contacts requirement. *Moncrief*, 481 F.3d at 312 (5th Cir. 2007). Random, fortuitous, and attenuated contacts are indeed the only contacts IDQ has or can point to in this forum; thus, IDQ cannot refute the lack of specific jurisdiction. Accordingly, without activities specifically related to the EDTX, this second program for specific jurisdiction fails.

**3. Under the Third Prong for Specific Jurisdiction, Personal Jurisdiction Over ACH in this District Would Not be "Reasonable and Fair"**

Because ACH has not purposefully availed itself of the privilege of conducting activities in Texas, and because ACH has not purposefully directed its activities at the forum, and because there is no connection, other than the "random, fortuitous, and attenuated" happenstance that ACH's products are sold by a Wal-Mart in Texas, it would be unfair and unreasonable for this forum to exercise specific personal jurisdiction over ACH in this case. Further, neither party has a tenable connection to the forum at all. IDQ is headquartered in the Northern District of Texas, and has only chosen the Eastern District of Texas for forum shopping reasons, in an attempt to gain a tactical advantage through this forum's renowned, strict patent rules and procedures. Here, a non-resident plaintiff seeks to gain an unfair, tactical advantage by seeking to haul a foreign defendant into an inconvenient forum with only the most tenuous jurisdictional ties.

Notably, this is not the first case where a supplier to Wal-Mart has been sued in the EDTX. This District has heard a similar, yet procedurally distinguishable, case regarding sales of a foreign-defendant's products to Wal-Mart in *Frito-Lay N. Am., Inc. v. Medallion Foods, Inc.*, where jurisdiction was held to be proper over a defendant that sold allegedly infringing tortilla chips to Wal-Mart, which were then branded as Wal-Mart's store brand and distributed as part of a national distribution system that ensured the products were sold within the EDTX. *Frito-Lay N.*

*Am., Inc. v. Medallion Foods, Inc.*, 867 F. Supp. 2d 859, 866 (E.D. Tex. 2012). But, in that case, the plaintiff was located in the EDTX, as were the inventors – neither is the situation here. *Id.* Further, in *Frito-Lay*, the defendant, after receiving a cease-and-desist letter, refused to respond to the plaintiff's negotiation attempts, but rather, the defendant had raced to the courthouse in Arkansas to file a declaratory judgment action to attempt to win the jurisdictional race to the courthouse and have the case heard in Arkansas. *Id.* at 863-64. As such, in *Frito-Lay*, it was "reasonable and fair" to require the defendant to be hauled to court in the EDTX. *Id.* But, the present case has a *completely opposite* procedural posture. Here, ACH is attempting to follow the rules of the jurisdictional system, whereas IDQ is improperly attempting to use the EDTX for tactical reasons, even though IDQ has no ties to the EDTX. Thus, by filing the case outside of its home jurisdiction, and by attempting to pin jurisdiction in the EDTX, IDQ improperly attempts to "game the system." For this reason, it is "fair and reasonable" to reject IDQ's claim of specific jurisdiction over ACH.

In coming to its conclusion on jurisdiction, the court in *Frito-Lay* relies on the case, *Icon Health & Fitness, Inc. v. Horizon Fitness, Inc.*, 2009 WL 1025467 (E.D. Tex., 2009). But, the present case has only modest factual similarity to that of *Icon Health*, and thus, the ruling in that does not apply to our case either. Although the defendant in *Icon Health* sold products in Texas through retail distributors, it also *directly sold and shipped* products to customers in the forum when the retailers had insufficient inventory. *Id.* at *2. Also, the defendant had a subsidiary with a sales office in Dallas, Texas. *Id.* Thus, the defendant's contacts with the forum in *Icon Health* were substantially more pervasive than those of ACH in this case. Indeed, it was fair and reasonable for the court in *Icon Health* to exercise jurisdiction over the defendant, whereas here, in contrast, ACH's only contact with the forum is Wal-Mart's sale of the accused product.

Thus, this third prong for specific jurisdiction is also not satisfied. Accordingly, ACH is subject to neither general nor specific jurisdiction in this District. Therefore, ACH respectfully requests dismissal of this case for lack of personal jurisdiction pursuant to Rule 12(b)(2).

## VII. DISMISSAL IS PROPER UNDER RULE 12(b)(3) FOR IMPROPER VENUE

Venue in patent infringement actions is controlled exclusively by 28 U.S.C. § 1400(b). Per Section 1400(b), venue is only proper in (1) "the judicial district where the defendant resides" or (2) "where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b) (2015). Here, IDQ has not shown, nor can it show, that venue is proper in the EDTX.

### A. VENUE IS IMPROPER, AS ACH DOES NOT RESIDE IN TEXAS

In its Complaint, IDQ merely alleges that "[v]enue in this judicial district is proper pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b)." Dkt. 1 at ¶ 7. But, IDQ has not met its burden by pleading a *prima facie* case of venue, specifically with regard to the requirement that the EDTX is the district where the Defendant resides – indeed, as it cannot, as ACH does not reside in this District. Indeed, IDQ does not allege, nor can it, that Texas is "where the defendant resides" as clearly required by 28 U.S.C. § 1400(b). Indisputably, ACH does not reside in Texas, as it is a Chinese company with no headquarters or offices in the United States. Gao Dec. at ¶¶ 4-7, 13.

### B. VENUE IS IMPROPER, AS NONE OF ACH'S ALLEGED ACTS OF INFRINGEMENT ARE SPECIFIC TO THE EDTX, AND BECAUSE ACH HAS NO ESTABLISHED PLACE OF BUSINESS IN TEXAS

In the bare allegation on venue in its Complaint, IDQ makes no reference to any alleged acts of the Defendant, as is needed to present a *prima facie* case of venue. *See* Dkt. 1 at ¶ 7. IDQ merely generally refers to a purchase at a Wal-Mart store in Tyler, Texas, but such a purchase is not a basis to satisfy the venue requirement for "where the defendant has committed acts of

infringement and has a regular and established place of business." 28 U.S.C. § 1400(b) (2015). Indeed, even if ACH arguably "committed acts of infringement" in the forum (which ACH did not), IDQ cannot meet the pleading burden, because ACH has no established place of business in the United States at all, much less in the Eastern District of Texas. Further, although IDQ alleges that ACH purportedly sells infringing products within the forum state (which ACH does not), these sales are conducted solely at the discretion of Wal-Mart – ACH has nothing to do with the sales at Wal-Mart stores. ACH does not instruct Walmart to sell its products in Texas. Rather, ACH sells its products to Wal-Mart, which then sells the products at its retail locations nationwide. ACH has no specific knowledge of the individual Wal-Mart store locations that stock ACH's products. Accordingly, none of ACH's allegedly infringing activities are specific to the Eastern District of Texas.

Thus, because ACH does not reside in the EDTX, has no established place of business in the EDTX, and does not direct any sales to the EDTX, venue in the EDTX is improper. Accordingly, ACH respectfully requests dismissal for improper venue under Rule 12(b)(3).

## VIII. IF THIS CASE IS NOT DISMISSED UNDER RULE 12(B)(5) FOR INSUFFICIENT SERVICE OF PROCESS, RULE 12(B)(2) FOR LACK OF PERSONAL JURISDICTION, OR RULE 12(b)(3) FOR IMPROPER VENUE, THEN, ALTERNATIVELY, THIS CASE SHOULD BE TRANSFERRED TO THE NORTHERN DISTRICT OF ALABAMA

As set forth above, ACH outlines three reasons why IDQ's Complaint should be dismissed, either under Rule 12(b)(5) for improper service, under Rule 12(b)(2) for lack of jurisdiction, or under Rule 12(b)(3) for improper venue. But, if this Court declines to dismiss for any of these reasons, alternatively, ACH respectfully requests transfer to the Northern District of Alabama.[1]

[1] Although ACH does not admit to being subject to personal jurisdiction in the Northern District of Alabama, it will consent to jurisdiction for purposes of this action only as it understands that,

### A. THE PRIVATE INTEREST FACTORS WEIGH IN FAVOR OF TRANSFER TO THE NORTHERN DISTRICT OF ALABAMA (NDAL)

Each of the private interest factors for considering transfer to a new forum weigh in favor of transfer from the EDTX to the NDAL: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and 4) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *In re Volkswagen I*, 371 F.3d at 203 (5th Cir. 2004); *In re Nintendo*, 589 F.3d at 1198 (Fed. Cir. 2009); *In re TS Tech*, 551 F.3d at 1319 (Fed. Cir. 2008). Although the fourth factor is neutral (as there are no particular problems to note, each of the first three factors is addressed, in turn, below.

#### 1. The NDAL Affords Greater Ease of Access to Sources of Proof

There are two foreseeable sources of proof in this case that are within the Northern District of Alabama, whereas no foreseeable sources of proof are in the Eastern District of Texas. First, as noted in previous sections, ACH purchases the cans used in the processing and manufacture of the R-134a product directly from ITW Sexton, a can manufacturer in Decatur, Alabama. Gao Dec. at ¶ 11. As these cans are used in the processing and manufacture of the accused products, ITW Sexton will likely be subject to at least some third-party discovery. Also, one of the allegations in the Complaint pertains to patent marking, and the patent marking on the accused products is due to patents owned by ITW Sexton, which further makes ITW Sexton relevant to the case. Second, ACH employs a marketing consultant, James Lee Brennard, who resides and works within the Northern District of Alabama. *Id.* at ¶ 9; Brennard Dec. at ¶ 5. Mr. Brennard, as part of his responsibilities as a marketing contractor affiliated with ACH, maintains a P.O. Box, used for customer correspondence regarding the accused products, and he forwards

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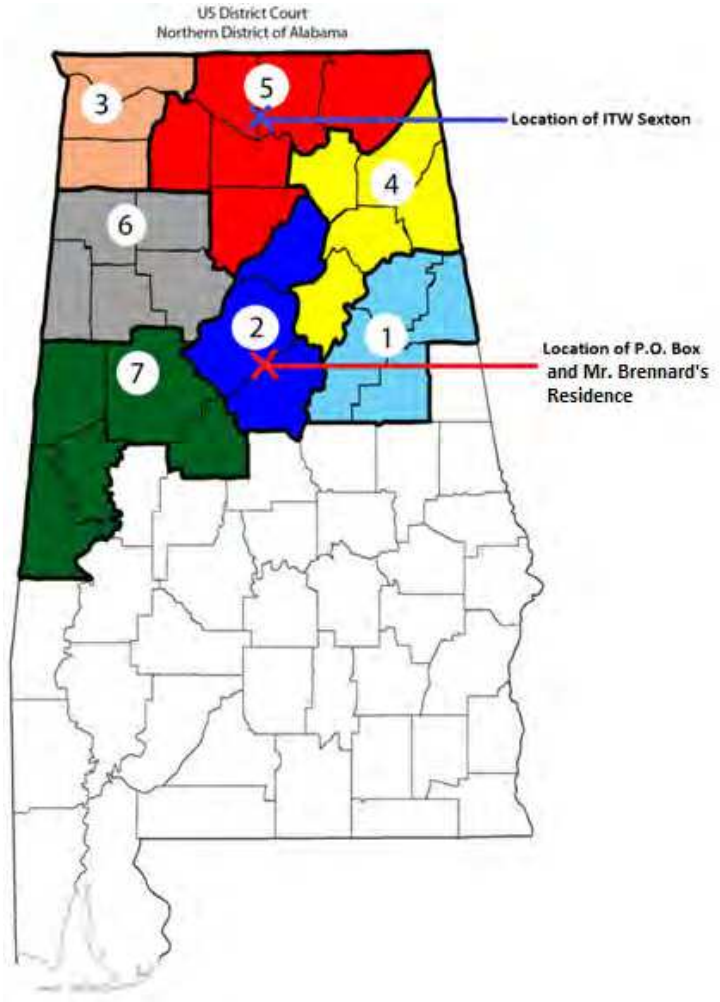
as per the particular facts and circumstances of this case, the location of ITW Sexton is important and should be given significant weight when selecting the forum as within the State of Alabama.

correspondence to China for response, as needed. Gao Dec. at ¶ 10; Brennard Dec. at ¶ 6. Also, one of the allegations in the Complaint pertains to the P.O. Box in Alabama, as IDQ claims that there is no such P.O. Box in Alabama. Accordingly, this contractor will also be a source of proof that IDQ will surely want to investigate as relates to allegations that are specific to Alabama.




To further illustrate the importance of Alabama, the above figure shows the locations of the main sources of evidence and witnesses, all of which are within the NDAL. Therefore, as these primary sources of proof are located in the NDAL, this factor weighs in favor of transfer.

**2. Specific Witnesses Will Be Subject to Attendance in the NDAL**

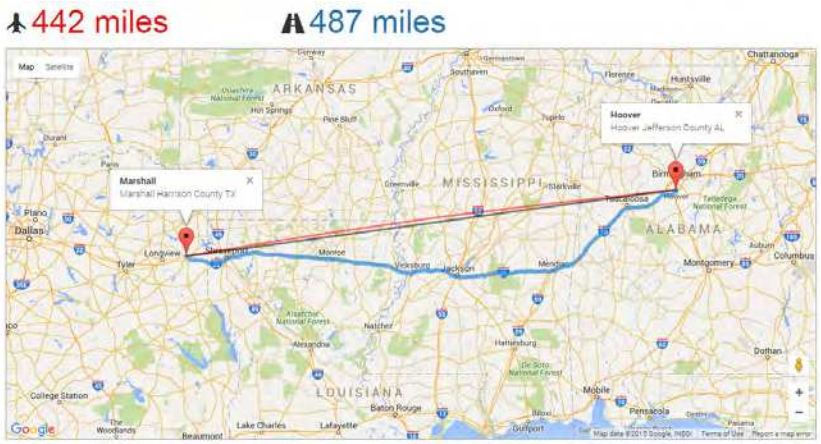
As noted above, ACH purchases the cans used in processing and manufacture of the accused R-134a product directly from ITW Sexton, a can manufacturer located in Decatur, Alabama, which is in the NDAL. Gao Dec. at ¶ 11; Brennard Dec. at ¶ 7. Indeed, ITW Sexton produces all cans used for the R-134a refrigerant at its location in Decatur, Alabama (in the NDAL). ACH anticipates that these cans will play a pivotal role in the litigation (at least with respect to the patent marking issue), and the parties will likely seek third-party discovery, including witness depositions, from ITW Sexton. Therefore, transfer to the NDAL will subject essential witnesses to attendance and discovery, so this factor also weighs in favor of transfer.

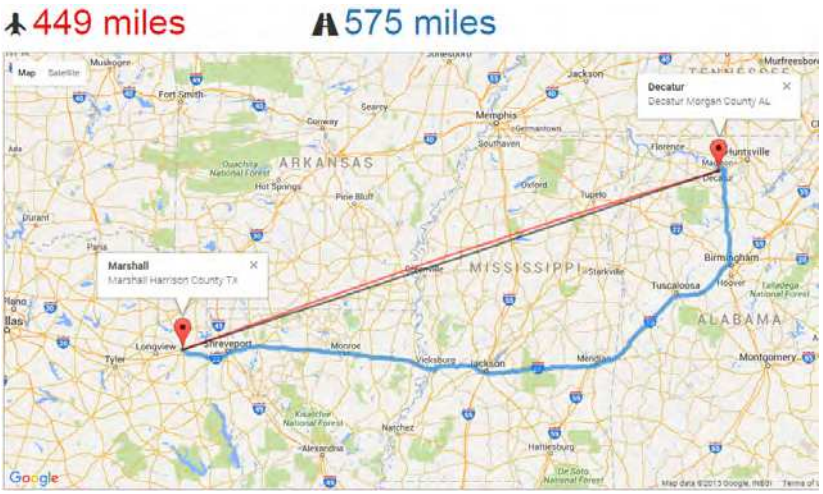
**3. Cost of Attendance for Witnesses Will Be Less in the NDAL**

The Fifth Circuit has adopted a "100 mile rule" to assist with analysis of this third factor in the private interest factors for transfer. *See In re Volkswagen I,* 371 F.3d at 204–05 (5th Cir. 2004). "When the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled." *Id.* at 205. Notably, the "100 mile rule" also favors transfer (with differing degrees) if the transferee venue is a shorter average distance from witnesses than the transferor venue. *See In re Volkswagen II,* 545 F.3d at 317 (5th Cir. 2008); *In re TS Tech,* 551 F.3d at 1320 (Fed. Cir. 2008).

Again, as noted above, the witnesses at ITW Sexton in Alabama (Decatur), as well as Mr. Brennard, the marketing consultant for ACH located in Alabama (Hoover), reside well outside a 100-mile radius of the EDTX house. Specifically, as noted in the previous section, the can manufacturer that supplies cans used in processing the accused technology is located in Decatur,

Alabama, in the NDAL. And, as noted earlier, Mr. Brennard lives in and maintains the P.O. Box in Hoover, Alabama. Gao Dec. at ¶¶ 8-10; Brennard Dec. at ¶¶ 2, 5-6. As shown in the figures below, each of these locations is well outside of the 100-mile radius of the Marshall Courthouse, Hoover being 442 miles from Marshall and Decatur being 449 miles from Marshall.




Accordingly, the cost for these witnesses to attend depositions, and even trial, will be greatly reduced by a transfer from the EDTX to the NDAL, which is within the 100-mile radius of their homes or place of employment. Thus, once again, this private interest factor (cost of attendance) favors transfer to the NDAL.

### B. THE PUBLIC INTEREST FACTORS ALSO WEIGH IN FAVOR OF TRANSFER TO THE NORTHERN DISTRICT OF ALABAMA (NDAL)

Each of the public factors for considering transfer to a new forum also favor transfer to the NDAL: (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. *In re Volkswagen I*, 371 F.3d at 203 (5th Cir. 2004); *In re Nintendo*, 589 F.3d at 1198 (Fed. Cir. 2009); *In re TS Tech*, 551 F.3d at 1319 (Fed. Cir. 2008). These public interest factors are considered, below.

#### 1. NDAL is Significantly Less Congested than the EDTX

Although this Court generally analyzes the average time to trial for a patent case in each forum to determine docket congestion, the NDAL has had few patent cases go to trial. Thus, the data for time to trial is not exemplary of the average time to trial for this district. Instead, due to lack of data, this Court should consider the docket congestion statistics, as provided below, in analyzing this factor. Notably, the NDAL has a much less congested docket than the EDTX. Based on statistics published as of June 30, 2015, the EDTX currently has 5,794 pending cases, averaging 724 open cases per judgeship. *See* Ex. 1. In stark contrast, the NDAL has only 3,057 pending cases, averaging only 359 open cases per judgeship. *Id.* Each judge in the EDTX, therefore, has more than twice the number of open cases as each judge in the NDAL. The NDAL, therefore, is a much less congested forum, and as a result, the NDAL is a much more favorable location for this dispute to be adjudicated based on congestion and the fair and proper allocation of judicial resources. Therefore, this factor weighs in favor of transfer to the NDAL.

**2. EDTX has No Specific Interest in Deciding this Case**

As to the specific interest of the EDTX in deciding a case, the Fifth Circuit has explained that "[j]ury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation." *In re Volkswagen I,* 371 F.3d at 206 (5th Cir. 2004). And, generally, local interests that "could apply virtually to any judicial district or division in the United States" are disregarded in favor of particularized local interests. *In re Volkswagen II,* 545 F.3d at 318 (5th Cir. 2008); *In re TS Tech,* 551 F.3d at 1321 (Fed. Cir. 2008). Thus, in cases where products are sold throughout the United States, the citizens of any venue in the United States do not have a particularized interest in deciding the dispute, simply based on product sales within the venue. *In re Nintendo,* 589 F.3d at 1198 (Fed. Cir. 2009).

As noted above, this case has no specific ties to the EDTX, and, as such, the EDTX can have no real interest in deciding the issues. Neither party has any presence or connection with the EDTX—IDQ's "home forum" is the NDTX, and ACH is a foreign corporation. Further, IDQ manufactures its "All-in-One" products including the refrigerant kits A/C PRO® and ARCTIC FREEZE®, which embody the asserted patents, at a facility in Garland, Texas. Dkt. 1 at ¶¶ 12, 21. IDQ also stores its manufactured products at a warehouse near this facility, presumably also in Garland, Texas. *Id.* Both of these facilities are also in the NDTX, not in the EDTX.

Further, the accused products have no specific ties to the EDTX. The cans are purchased from a can manufacturer in the NDAL, and the final product is shipped from China to Wal-Mart. Gao Dec. at ¶¶ 11-12; Brennard Dec. at ¶¶ 7-8. Although IDQ alleges that ACH sells the allegedly infringing products within the forum state, those sales are conducted solely at the discretion of Wal-Mart. ACH merely supplies Walmart, which then sells the products at its retail locations nationwide. Thus, ACH has no specific knowledge of the individual Walmart store

locations that stock ACH's products. Therefore, again, this factor weighs in favor of transfer to the NDAL.

**3. Both the EDTX and the NDAL Are Equally Equipped to Handle the Legal Issues that will Apply to the Case, and Therefore, Transfer to the NDAL Will Result in No Additional Conflicts of Applicable Law**

The last two public interest factors in the transfer analysis deal with choice of law and application of law issues. The majority of the claims brought in the instant suit arise under federal law, which can be applied equally by all federal district courts. Therefore, as to all of the claims in the Complaint that arise under federal law, these two factors are entirely neutral.

IDQ does also allege claims purportedly arising under Texas common law claims—unfair competition and unjust enrichment. The general choice of law rule, when it comes to transfer, is:

> Once a plaintiff has exercised his choice of forum under § 1404(a), the state law of that forum should govern the action, regardless of the wisdom of the plaintiff's selection. Thus, no matter who seeks to transfer the action to a more convenient forum under § 1404(a), the state law of the forum in which the action was originally commenced remains controlling.

*Ellis v. Great Sw. Corp.*, 646 F.2d 1099, 1109 (5th Cir. 1981) (quoting *Martin v. Stokes*, 623 F.2d 469, 473 (6th Cir. 1980)). But, as outlined above, neither personal jurisdiction nor venue are proper in the EDTX - or in Texas at all. Therefore, for a transfer where personal jurisdiction and venue are improper, as in this case, the choice of law standard should be the same as applies in a § 1406(a) analysis, which means that IDQ would convert its Texas common law claims to Alabama common law claims once the case has been transferred to the proper forum:

> If the state law of the forum in which the action was originally commenced is applied following a § 1406(a)transfer, the plaintiff could benefit from having brought the action in an impermissible forum. Plaintiffs would thereby be encouraged to file their actions in the federal district court where the state law was the most advantageous, regardless of whether that district court was a proper forum. Accordingly, we conclude, as have the majority of authorities that have considered this question, that following

> a transfer under § 1406(a), the transferee district court should apply its own state law rather than the state law of the transferor district court.

*Id.* at 1109 (quoting *Martin*, 623 F.2d. at 472 (6th Cir. 1980)). Accordingly, to prevent IDQ from benefitting from commencing this action improperly in the EDTX, where there is no jurisdiction and improper venue, the NDAL would apply its own law for the state claims, once the case is transferred.

Therefore, there will be no problems with choice of law and conflict of law, as it is settled that the law of the transferor court will apply its state law in a case such as this. Accordingly, both of these final two factors again weigh in favor of transfer to the NDAL.

## IX. JURISDICTIONAL DISCOVERY IS UNNECESSARY FOR A RULING

In the pending Motion to Quash Service, IDQ has already asked for "service discovery," seeking a deposition to try to prove that the defective service was not defective after all. Now, with this Motion, IDQ will likely ask for "jurisdictional discovery" and "venue discovery." However, as with service discovery, jurisdictional and venue discovery should not be allowed. After all, in this case, it is clear that ACH was improperly served and that this case was improperly filed in the EDTX without jurisdiction over ACH and without any reasonable basis to believe that venue was proper in the EDTX. *See Trintec Indus., Inc. v. Pedre Promotional Products., Inc.*, 395 F.3d 1275, 1283 (Fed. Cir. 2005) (holding that jurisdictional discovery is only appropriate where existing record is inadequate to support personal jurisdiction and party demonstrates that it can supplement its jurisdictional allegations through discovery).

Also, discovery would not fit within the spirit of the recently updated Rule 26(b)(2).[2] ACH has provided sufficient evidence to demonstrate insufficient service of process, lack of

[2] According to the modified Rule 26(b)(2): "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense *and proportional to the*

personal jurisdiction, and improper venue, as outlined above. Accordingly, and particularly in light of the recent modification to the federal rules, the cost and burden of service discovery, jurisdictional discovery, and/or venue discovery vastly outweighs the potential benefit. IDQ has already sought the deposition of at least one Chinese citizen, and presumably will seek additional jurisdictional and venue discovery from China as well. These depositions of Chinese citizens (regardless of location) involve great expense. Further, any document production for purposes of service discovery, jurisdictional discovery, and/or venue discovery will likely also require the participation of third-party, ITW Sexton and/or Wal-Mart. Such document discovery will be expensive and time-consuming.

Nonetheless, if the Court does allow any service discovery, jurisdictional discovery, and/or venue discovery, then ACH respectfully requests that the Court stay all case deadlines, save discovery related to this Motion, pending the resolution of this Motion to Dismiss/Transfer.[3]

## X. DISMISSAL OR TRANSFER IS ESPECIALLY APPROPRIATE HERE, BECAUSE PLAINTIFF IDQ HAS FILED THIS ACTION IN THIS DISTRICT, DESPITE NO PLAUSIBLE CONNECTION OF THE PARTIES TO THE FORUM

Dismissal under Rule 12 or transfer of the case to the NDAL is particularly necessary in this case, because IDQ has filed this case in the EDTX in order to seek tactical advantage, which is improper. It is improper for a party to "attempt[] to win a tactical advantage resulting from local laws that favor the plaintiff's case, the habitual generosity of juries in the United States or in the forum district . . . or the inconvenience and expense to the defendant resulting from litigation in that forum." *Irragori v. United Techs. Corp.*, 274 F.3d 65, 72 (2d. Cir. 2001). Such

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*needs of the case*, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and *whether the burden or expense of the proposed discovery outweighs its likely benefit*." Fed. R. Civ. P. 26(b)(2) (emphasis added).

[3] If the Court does allow discovery on service, jurisdiction, or venue, then discovery should be limited only to these matters. Full discovery should not begin until after these issues are decided.

forum shopping should not be allowed, particularly here, where the facts of this case clearly indicate that there was no realistic basis for IDQ to file this case in the EDTX, as neither IDQ nor ACH have any connection to the forum – not to mention complete lack of witnesses or evidence.

## XI. CONCLUSION: THIS CASE SHOULD BE DISMISSED FOR ANY OR ALL OF (1) INSUFFICIENT SERVICE OF PROCESS, (2) LACK OF PERSONAL JURISDICTION, AND//OR (3) IMPROPER VENUE, OR, IN THE ALTERNATIVE, SHOULD BE TRANSFERRED TO THE NORTHERN DISTRICT OF ALABAMA

IDQ's Complaint should be dismissed under Rule 12(b) for failure to establish personal jurisdiction over ACH under Rule 12(b)(2), or for improper venue under Rule 12(b)(3), or for its utter disregard for the requirements of proper service under Rule 12(b)(5). Neither this case, nor Plaintiff IDQ, nor Defendant ACH have any ties to the EDTX. Rather, the claims relate, if anywhere, to activities in the NDAL in connection with the can manufacturing located there. Thus, ACH respectfully requests that this case be dismissed for lack of personal jurisdiction under Rule 12(b)(2), insufficient service of process under rule 12(b)(5), or improper venue under Rule 12(b)(3), or, alternatively, ACH respectfully requests transfer of this case to the Northern District of Alabama.

Respectfully submitted,

Dated: December 8, 2015

*/s/ Lionel M. Lavenue*
Lionel M. Lavenue

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ATTORNEY FOR DEFENDANT
AEROSPACE COMMUNICATIONS
HOLDINGS CO., LTD. (for the limited
purposes of this Motion to Dismiss or
Transfer as well as other necessary papers in
the case[4])

[4]This is a limited appearance only, and it does not allow IDQ to serve counsel for ACH, which would allow IDQ to benefit from the ineffective attempts at service and continued refusal to follow proper procedures for proper service of a foreign company under the Hague Convention.

**CERTIFICATE OF CONFERENCE**

The Parties have complied with Local Rule CV-7(h). Counsel for both ACH and IDQ met and conferred via email on November 17 and 18, 2015, and again on December 2 and 3, 2015. Communications were exchanged between Lionel M. Lavenue for ACH and Janine Carlan and Taniel Anderson for IDQ. Counsel for IDQ opposes this Motion to Dismiss, or In the Alternative, to Transfer to the Northern District of Alabama.

/s/ *Lionel M. Lavenue*

Lionel M. Lavenue

**CERTIFICATE OF SERVICE**

I hereby certify that on December 8, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing ("NEF") to counsel of record who have appeared in this case on behalf of the identified parties.

/s/ *Lionel M. Lavenue*

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Phone: (571) 203-2700
Fax: (202) 408-4400

*Counsel for Defendant Aerospace Communications Holdings Co., Ltd.* (for the limited purposes of this Motion to Dismiss or Transfer)

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

| | |
|---|---|
| IDQ OPERATING, INC.,<br><br>Plaintiff,<br><br>vs.<br><br>AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.,<br><br>Defendant. | Case No. 6:15-cv-00781-JRG-KNM<br><br>**JURY TRIAL DEMANDED** |

**DECLARATION OF JAMES LEE BRENNARD IN SUPPORT OF IN SUPPORT OF DEFENDANT AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, TO TRANSFER TO THE NORTHERN DISTRICT OF ALABAMA**

I, James Lee Brennard, being over 21 years of age, of sound mind, and capable of making this Declaration, declare and testify as follows:

1. I am employed as a marketing contractor for Aerospace Communications Holdings Co., Ltd. ("ACH"). I make this declaration based on personal knowledge and following a reasonable investigation, and if called upon to testify, I could and would testify competently to the matters set forth below.
2. I reside at 609 Restoration Drive, Hoover, Alabama 35226 and am the only affiliate of ACH who resides in the United States.
3. In my capacity as a marketing contractor for ACH, I am familiar with the corporate structure of ACH's business activities within the state of Alabama.

4. I understand that, in the above referenced action, IDQ, Inc. ("IDQ") accuses ACH's AeroCool R-134a refrigerant product of patent infringement, among other alleged causes of action.
5. ACH maintains a P.O. Box, located at P.O. Box 36786, Hoover Alabama 35236. ACH prints the P.O Box address on its products as a means of submitting customer comments to ACH.
6. As part of my responsibilities as a marketing contractor, I maintain the P.O. Box, directing any customer correspondence to ACH's headquarters in China.
7. ACH purchases cans used in the manufacture of its R-134a product from ITW Sexton.ITW Sexton is located at 3101 Sexton Road, Decatur, Alabama, 35603-1453.
8. ACH sells its refrigerant products to Walmart, located in Bentonville, Arkansas. The exact address for the Walmart headquarters is 702 S.W. 8th Street, Bentonville, AK 72716.
9. To the best of my knowledge these are the only contacts that ACH has with the United States.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 4, 2015

Name: James Lee Brenhard
Title:
Aerospace Communications Holdings Co., Ltd.

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**TYLER DIVISION**

| | |
|---|---|
| IDQ OPERATING, INC.,<br><br>Plaintiff,<br><br>vs.<br><br>AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.,<br><br>Defendant. | Case No. 6:15-cv-00781-JRG-KNM<br><br>**JURY TRIAL DEMANDED** |

**DECLARATION OF JUN GAO IN SUPPORT OF IN SUPPORT OF DEFENDANT AEROSPACE COMMUNICATIONS HOLDINGS CO., LTD.'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, TO TRANSFER TO THE NORTHERN DISTRICT OF ALABAMA**

I, Jun Gao, being over 21 years of age, of sound mind, and capable of making this Declaration, declare and testify as follows:

1. I am employed as project manager at Aerospace Communications Holdings Co., Ltd. ("ACH"). I make this declaration based on personal knowledge and following a reasonable investigation, and if called upon to testify, I could and would testify competently to the matters set forth below.
2. In my capacity as project manager, I am familiar with the corporate structure of ACH as well as the location of its business activities, records, and employees
3. I understand that, in the above referenced action, IDQ, Inc. ("IDQ") accuses ACH's AeroCool R-134a refrigerant product of patent infringement, among other alleged causes of action.
4. ACH is a company organized and existing under the laws of the People's Republic of China, and is located at No. 138 Jiefang Road, Hangzhou, China 31009.

5. ACH has a total of 21 locations in China.
6. ACH's research, engineering, product development, and sales, at least with regard to the AeroCool R-134a refrigerant product, are almost exclusively based out of its headquarters in Hangzhou, China.
7. ACH is not registered, authorized, or qualified to do business in Texas; is not required to and does not maintain any registered agents in Texas; does not own, lease, or rent any property in Texas; does not maintain any offices, facilities, or other places of business in Texas; does not manufacture products in Texas; does not store any records in Texas; has not paid any taxes in Texas; does not maintain any bank accounts in Texas; and does not market any products to the residents of Texas.
8. ACH maintains a P.O. Box, located at P.O. Box 361786, Hoover Alabama 35236. ACH prints the P.O Box address on its products as a means of submitting customer comments to ACH.
9. ACH employs a marketing contractor named James Lee Brennard who resides at 609 Restoration Drive, Hoover, Alabama 35226.
10. As part of Mr. Brennard's responsibilities, he maintains the P.O. Box, directing any customer correspondence to ACH's headquarters in China.
11. ACH purchases cans used in the manufacture of its R-134a product from ITW Sexton. ITW Sexton is located at 3101 Sexton Road, Decatur, Alabama, 35603-1453.
12. ACH sells its refrigerant products to Walmart, located in Bentonville, Arkansas. The exact address for the Walmart headquarters is 702 S.W. 8th Street, Bentonville, AK 72716.
13. ACH has no physical presence in the United States other than the contractor, James Lee Brennard, and the P.O. Box, both of which are located in Alabama.

14. Other than the above-described contacts, ACH has no other contact with the United States.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 4, 2015

Name: Jun Gao
Title:
Aerospace Communications Holdings Co., Ltd.

**在美国地区法院**
**得克萨斯州东区**
**泰勒部**

| | | |
|---|---|---|
| IDQ OPERATING,INC., | ) | |
| 原告 | ) | 案号：6:15-cv-00781-JRG-KNM |
| 诉 | ) | **要求进行陪审团审判** |
| 航天通信控股集团股份有限公司 | ) | |
| 被告 | ) | |

**高俊支持被告航天通信控股集团股份有限公司提起的**
**撤销动议,或者将案件转移至**
**阿拉巴马州北区法院**

本人，高俊，年满 21 岁，心智健全，有能力进行此声明，宣布并证明如下:

1. 本人受雇于航天通信控股集团股份有限公司("ACH")，职务为项目经理。基于个人所悉并经合理调查后，做出本声明。如被要求作证，本人有能力并且愿意就以下所述事项作证。
2. 本人作为项目经理的职权范围内，熟悉 ACH 的公司架构，及其商业活动场所、档案、和雇员。
3. 本人理解如上所列案件，即 IDQ, Inc.("IDQ") 指控 ACH 的 AeroCool R-134a 制冷产品的专利侵权，此案还包括此外其它指控事项。
4. ACH 是一家按照中国人民共和国法律组建成立的公司。公司位于中国杭州市解放路 138 号，邮编 31009。

5. ACH 在中国共有 21 个办公地点。

6. ACH 的研究、工程、产品开发和销售（至少对于 AeroCool R-134a 制冷产品而言）几乎全部完成于 ACH 的中国杭州总部。

7. ACH 在德州未注册、授权、或有资格经营；在德州不要求或没有维持任何登记的代理人；在德州不拥有、不租赁任何物业；在德州没有任何办公室、设施、或商业地点；在德州不制造任何产品；在德州没有储存任何档案；在德州没有支付任何税款；在德州没有任何银行账户；没有推销任何产品给德州居民。

8. ACH 维持使用一个邮政信箱位于 P.O.Box 361786, Hoover Alabama 35236。ACH 将邮政信箱地址打印在其产品上，用以客户向 ACH 提交客户反馈意见。

9. ACH 聘用营销合同商 James Lee Brennard，其居住地址为 609 Restoration Drive, Hoover, Alabama 35226。

10. 作为 Brennard 先生职责的一部分，他维护这个邮政信箱，将任何收到的客户信件直接反馈给 ACH 位于中国的总部。

11. ACH 从 ITW Sexton 处购买用于 R-134a 产品的容器。ITW Sexton 的地址是 3101 Sexton Road, Decatur, Alabama, 35603-1453。

12. ACH 出售其制冷剂产品至位于阿肯色州 Bentonville 的沃尔玛。沃尔玛总部的具体地址为 702 S.W.8th Street, Bentonville, AK 72716。

13. 除位于阿拉巴马州的合同商 James Lee Brennard 和邮政信箱外，ACH 在美国没有实体存在。

14. 除上述联系外，ACH 没有其他与美国的联系。

根据美国法典第 28 篇第 1746 条有关伪证罪的规定，本人谨此声明以上所述正确属实。

日期:2015 年 12 月 6 日

姓名：高俊
职务：项目经理
航天通信控股集团股份有限公司

# EXHIBIT 1

**DALLAS COUNTY TAX OFFICE**
**JOHN R. AMES, CTA**
TAX ASSESSOR/COLLECTOR
500 Elm Street Dallas, Texas 75202-3304
214-653-7811 www.dallascounty.org/tax
email: property.tax@dallascounty.org

# 2015 TAX STATEMENT

**IDQ HOLDINGS INC**
**ATTN ANNETTE RIVERA MGR ACCT**
**SUITE 300**
**44 OLD RIDGEBURY RD**
**DANBURY, CT 68105-107**

**Account: 99982600000014750**

Property Description:

2901 W KINGSLEY RD, CG

PERSONAL PROPERTY
IDQ OPERATING

Date Printed: December 08, 2015

| | |
|---|---|
| Land Value | 0 |
| Improvement Value | 28,135,800 |
| Agriculture Value | 0 |
| Market Value | 28,135,800 |

| Jurisdiction | Freeport Exemption | Taxable Value | Tax Rate | Tax Due |
|---|---|---|---|---|
| **DAL CNTY** | **21,236,740** | **6,899,060** | **.243100** | **$16,771.61** |
| **HOSP DIST** | **21,236,740** | **6,899,060** | **.286000** | **$19,731.31** |
| **COLL DIST** | **0** | **28,135,800** | **.123650** | **$34,789.92** |
| **SCH EQUAL** | **21,236,740** | **6,899,060** | **.010000** | **$689.91** |

Total Taxes for Account: $71,982.75
Previous Payment on Account: $71,982.75

| IF PAID IN | P&I | TOTAL DUE |
|---|---|---|
| **Feb** | | **$0.00** |
| **Mar** | | **$0.00** |

Pay Taxes online at
www.dallascounty.org/tax

**Total Due If Paid By January 31, 2016**
**$0.00**

***Your check may be converted to electronic funds transfer***

## Return This Portion With Your Payment

**Account: 99982600000014750**

2 0909090802060000000000000104070500115000000000006

**Total Due If Paid By January 31, 2016**
**$0.00**
Amount Paid: $_____.____

**Remit To:**
**JOHN R. AMES, CTA**
**P O Box 139066**
**Dallas, Texas 75313-9066**

IDQ HOLDINGS INC
ATTN ANNETTE RIVERA MGR ACCT
SUITE 300
44 OLD RIDGEBURY RD
DANBURY, CT 06810-5107

# EXHIBIT 2

## U.S. District Court — Judicial Caseload Profile

**TEXAS EASTERN**

| | | | 12-Month Periods Ending | | | | | | Numerical Standing Within | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Jun 30 2010 | Jun 30 2011 | Jun 30 2012 | Jun 30 2013 | Jun 30 2014 | Jun 30 2015 | U.S. | Circuit |
| **Overall Caseload Statistics** | Filings [1] | | 4,196 | 4,517 | 4,446 | 5,125 | 5,281 | 5,296 | | |
| | Terminations | | 3,665 | 3,986 | 4,104 | 4,617 | 4,896 | 5,408 | | |
| | Pending | | 4,293 | 4,834 | 5,154 | 5,640 | 6,000 | 5,794 | | |
| | Percent Change in Total Filings Current Year Over Earlier Year | | 26.2 | 17.2 | 19.1 | 3.3 | 0.3 | | 37 | 4 |
| | Number of Judgeships | | 8 | 8 | 8 | 8 | 8 | 8 | | |
| | Vacant Judgeship Months [2] | | 5.9 | 12.0 | 17.5 | 24.0 | 24.0 | 29.2 | | |
| **Actions per Judgeship** | **Filings** | Total | 525 | 565 | 556 | 641 | 660 | 662 | 14 | 4 |
| | | Civil | 376 | 424 | 412 | 500 | 528 | 564 | 9 | 1 |
| | | Criminal Felony | 148 | 140 | 143 | 140 | 131 | 97 | 29 | 4 |
| | | Supervised Release Hearings | 1 | 0 | 1 | 1 | 1 | 1 | 94 | 9 |
| | Pending Cases | | 537 | 604 | 644 | 705 | 750 | 724 | 12 | 3 |
| | Weighted Filings [2] | | 613 | 896 | 885 | 1,266 | 1,402 | 1,521 | 2 | 1 |
| | Terminations | | 458 | 498 | 513 | 577 | 612 | 676 | 13 | 3 |
| | Trials Completed | | 21 | 17 | 17 | 18 | 18 | 14 | 62 | 7 |
| **Median Time (Months)** | From Filing to Disposition | Criminal Felony | 9.7 | 11.2 | 11.1 | 12.8 | 12.2 | 14.3 | 81 | 9 |
| | | Civil [2] | 10.0 | 8.1 | 10.3 | 8.3 | 9.0 | 8.1 | 28 | 4 |
| | From Filing to Trial [2] (Civil Only) | | 22.5 | 23.2 | 24.8 | 18.5 | 27.9 | 22.9 | 21 | 5 |
| **Other** | Number (and %) of Civil Cases Over 3 Years Old [2] | | 161<br>5.4 | 190<br>5.6 | 179<br>5.2 | 234<br>6.0 | 227<br>5.4 | 240<br>5.5 | 44 | 5 |
| | Average Number of Felony Defendants Filed per Case | | 2.1 | 1.9 | 2.0 | 2.0 | 2.2 | 1.8 | | |
| | Jurors | Avg. Present for Jury Selection | 43.7 | 37.4 | 43.1 | 36.1 | 35.3 | 41.6 | | |
| | | Percent Not Selected or Challenged | 40.6 | 31.5 | 36.8 | 32.0 | 30.5 | 36.4 | | |

### 2015 Civil Case and Criminal Felony Defendant Filings by Nature of Suit and Offense

| Type of | Total | A | B | C | D | E | F | G | H | I | J | K | L |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Civil | 4,509 | 148 | 64 | 1,133 | 22 | 139 | 110 | 262 | 216 | 1,975 | 228 | 7 | 205 |
| Criminal [1] | 777 | 12 | 338 | 50 | 94 | 107 | 23 | 66 | 10 | 21 | 12 | 7 | 37 |

NOTE: Criminal data in this profile count defendants rather than cases and therefore will not match previously published numbers.

[1] Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings by "Nature of Offense" do not.

[2] See "Explanation of Selected Terms."

## U.S. District Court — Judicial Caseload Profile

**ALABAMA NORTHERN**

| | | | 12-Month Periods Ending | | | | | | Numerical Standing Within | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Jun 30 2010 | Jun 30 2011 | Jun 30 2012 | Jun 30 2013 | Jun 30 2014 | Jun 30 2015 | U.S. | Circuit |
| **Overall Caseload Statistics** | Filings [1] | | 3,771 | 4,943 | 5,052 | 3,751 | 2,988 | 2,872 | | |
| | Terminations | | 4,173 | 3,186 | 3,603 | 3,829 | 6,335 | 2,956 | | |
| | Pending | | 3,307 | 5,066 | 6,512 | 6,453 | 3,137 | 3,057 | | |
| | Percent Change in Total Filings Current Year Over Earlier Year | | -23.8 | -41.9 | -43.2 | -23.4 | -3.9 | | 52 | 5 |
| | Number of Judgeships | | 8 | 8 | 8 | 8 | 8 | 8 | | |
| | Vacant Judgeship Months [2] | | 4.7 | 0.0 | 0.0 | 8.2 | 13.4 | 4.7 | | |
| **Actions per Judgeship** | **Filings** | Total | 471 | 618 | 632 | 469 | 374 | 359 | 75 | 9 |
| | | Civil | 399 | 540 | 551 | 395 | 310 | 297 | 53 | 8 |
| | | Criminal Felony | 56 | 63 | 66 | 60 | 49 | 45 | 80 | 9 |
| | | Supervised Release Hearings | 17 | 15 | 15 | 14 | 15 | 17 | 75 | 8 |
| | Pending Cases | | 413 | 633 | 814 | 807 | 392 | 382 | 64 | 7 |
| | Weighted Filings [2] | | 427 | 541 | 594 | 472 | 374 | 365 | 67 | 8 |
| | Terminations | | 522 | 398 | 450 | 479 | 792 | 370 | 72 | 8 |
| | Trials Completed | | 23 | 22 | 26 | 22 | 22 | 21 | 24 | 4 |
| **Median Time (Months)** | From Filing to Disposition | Criminal Felony | 7.0 | 6.7 | 6.7 | 7.4 | 7.1 | 6.5 | 14 | 3 |
| | | Civil [2] | 14.3 | 8.5 | 8.0 | 8.6 | 22.7 | 11.0 | 72 | 8 |
| | From Filing to Trial [2] (Civil Only) | | 23.5 | 15.4 | 25.9 | 27.4 | 22.2 | 26.0 | 30 | 5 |
| **Other** | Number (and %) of Civil Cases Over 3 Years Old [2] | | 127<br>4.5 | 147<br>3.2 | 187<br>3.1 | 705<br>11.9 | 223<br>8.3 | 230<br>8.9 | 65 | 9 |
| | Average Number of Felony Defendants Filed per Case | | 1.2 | 1.3 | 1.3 | 1.2 | 1.1 | 1.2 | | |
| | Jurors | Avg. Present for Jury Selection | 34.3 | 36.1 | 35.8 | 35.9 | 35.1 | 33.7 | | |
| | | Percent Not Selected or Challenged | 36.0 | 33.9 | 30.6 | 34.1 | 29.3 | 31.9 | | |

**2015 Civil Case and Criminal Felony Defendant Filings by Nature of Suit and Offense**

| Type of | Total | A | B | C | D | E | F | G | H | I | J | K | L |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Civil | 2,379 | 310 | 86 | 583 | 11 | 38 | 154 | 234 | 128 | 21 | 599 | 7 | 208 |
| Criminal [1] | 355 | 4 | 78 | 18 | 118 | 65 | 8 | 19 | 4 | 11 | 8 | 9 | 13 |

NOTE: Criminal data in this profile count defendants rather than cases and therefore will not match previously published numbers.

[1] Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings by "Nature of Offense" do not.

[2] See "Explanation of Selected Terms."